

# PARLIAMENTARY REFORM

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## PREFACE

IN A PARLIAMENTARY DEMOCRACY the legislature is the most important branch of the Governmental machine. Yet during the past fifty years the British Parliament has become progressively less efficient. With Liberal and Labour Governments in power this inefficiency has been partly due to the sixty or eighty persons who in fact, if not in theory, form the House of Lords at any given time. For practical purposes they destroyed Gladstone's last Government. They compelled the Liberal Governments of 1906-14 to spend most of their time "ploughing the sands." They rendered even more difficult the already difficult task of the Labour Government of 1929-31. Nevertheless, Conservative or—what is much the same thing, since a Government progresses as quickly as its most reactionary members—Coalition Governments have been in power for the greater part of the last half-century ; and if Parliament has failed to do what Governments and people have demanded from it, the House of Commons must receive the larger share of the blame.

The inefficiency of the House of Commons has resulted in a substantial limitation of legislative output. Figures cannot be given. For, though some Bills are jettisoned owing to lack of time after they have been introduced, many more are never introduced because it would be a waste of time even to prepare them. Apart from measures which are suggested by party programmes, nearly every Government Department has in its pigeon-holes proposals, and even draft Bills, which do not see the light of day merely because there is no hope of success in the competition for Parliamentary time. Many parts of the law are in a shocking state of obscurity and confusion. Others are archaic and unjust. Such defects cannot be remedied because, even when some Department is responsible, Parliament has no time to deal with them.

Some Conservatives regard this as a wholly desirable limitation. They say that the real difficulty is not that there is too little legislation, but too much of it. What they really mean is that there is too much legislation of the kind which they dislike—the kind, that is, which imposes restrictions on British property-owners and industries and on ordinary people. It will be found that each of them wants more

legislation of certain kinds—legislation to remove such restrictions, or to impose further restrictions on the entry of foreign products, or to extend the national forces, or alter the distribution of taxation. Indeed, if allowance is made for difficulties created by the House of Lords, it is true to say that Conservative and predominantly Conservative Governments have found as much difficulty with the Parliamentary time-table as have Liberal and Labour Governments.

In any case, every Conservative will admit that not enough time is devoted to consideration of the national resources and the national finances, to the problems of defence and of Imperial relations. Every Conservative member will admit, too, that he spends much of his time doing unnecessary and silly things merely because the procedure of the House demands it. The back-bench member is almost entirely impotent in the House, though he may be able to do something for his constituents by writing to, and calling upon, Ministers. In the House he is part of a voting machine ; and even speeches are not always welcomed.

For these reasons the problem of Parliamentary procedure is not a party problem. It would become more acute under a Labour

Government which proposed to introduce a considerable number of radical measures. But it is one which demands solution, whatever be the party situation in the House of Commons. Indeed, it must not be treated as a party problem. The purpose of Parliamentary procedure is to obtain a just balance between the claims of the Government and the claims of minorities. Party politics have often been likened to a game. The comparison is not apt ; but it is true that they must be played according to rules. It is necessary that those rules should be devised with as much impartiality as it is possible for men to muster. In the following pages, therefore, I have not attempted to act the politician. I am concerned, solely as a technician, to discover means by which the House of Commons can be brought to work more efficiently.

This book took its origin from the Political Section of the New Fabian Research Bureau. Two years ago I was asked to submit a memorandum as a basis for a discussion on Parliamentary procedure. Actually, I submitted "Heads of Proposals," which were discussed at length. As a result of the discussion I was able to complete a memorandum by the end of last year. This, too, received lengthy examination

by an enlarged committee. Some amendments were then made, and at the request of the Labour Party the memorandum as amended was circulated to a sub-committee of the National Executive Council of the Labour Party. In the meantime, I had discussions with two former Cabinet Ministers of long Parliamentary experience, and with another former Minister. A fourth ex-Minister, who is still a member of the House of Commons, submitted observations in writing.

As a result of the criticisms and suggestions thus made available, I was able to introduce further amendments. In addition, the existence of the memorandum became known outside the New Fabian Research Bureau, and the *Manchester Guardian* asked to be allowed to see it. Two long articles based upon it were published by the *Manchester Guardian* on the 19th and 22nd May, 1934, and on the latter date the proposals were discussed in a leading article. Further criticisms, especially from the Rt. Hon. H. B. Lees-Smith and Colonel the Rt. Hon. Josiah Wedgwood, M.P., were forthcoming, and I made some modifications in consequence. Finally, I have rewritten some parts of the memorandum and have put it into a form suitable for publication. The discussion on

devolution in Chapter III is an addition. It was not in the original memorandum, because I did not consider that devolution provided any remedy. For the sake of completeness, I have explained my reasons. I have kept the discussion as short as I could, and I hope that in the process I have not misrepresented the views of the able students of institutions whose proposals I have criticised.

I have mentioned already that this book is the product of a constitutional lawyer and not of a party politician. At the same time, I cannot fail to be aware that if any of its proposals are put into effect it is likely to be through the action of a Labour Government. Indeed, the fact that the Labour Party asked for copies of the original memorandum shows that the subject is occupying attention. Perhaps I may point out, therefore, that the proposals fall into two groups. The one group seeks to make easier the passage of legislation without placing dangerous powers in the hands of the Government. The other group seeks to make possible effective Parliamentary discussion of the activities of a Government. The latter problem is not one with which a Labour Government would be immediately concerned. It would desire in the first two years of its term

of office to pass a number of measures of major importance. The first group of proposals would, I think, enable this to be done without assuming any powers which could justly be represented as a temporary dictatorship. Indeed, it will be seen that I have discussed this point with such a situation in mind.

The *Manchester Guardian* suggests that this is irrelevant to my main purpose. I do not think it is. In the modern world, "emergencies" tend to become rather frequent. There is a real danger (not, as I think, from the Labour side, though others disagree) that in the name of patriotism, or its opposite, injustices to the individual will be committed and justified. *Salus populi suprema lex* is a dangerous doctrine. For *salus populi* so easily becomes the favouring of friends and the suppression of opponents. If, therefore, emergencies are to be frequent, the ordinary law must be sufficiently elastic to provide for meeting them without excesses or injustices. It is fundamental that the law of Parliament should provide for justice and order, for it is the basis of all the law. If Parliament permits the laws to be warped, there is no remedy but revolution. Since no democratic party desires to create precedents

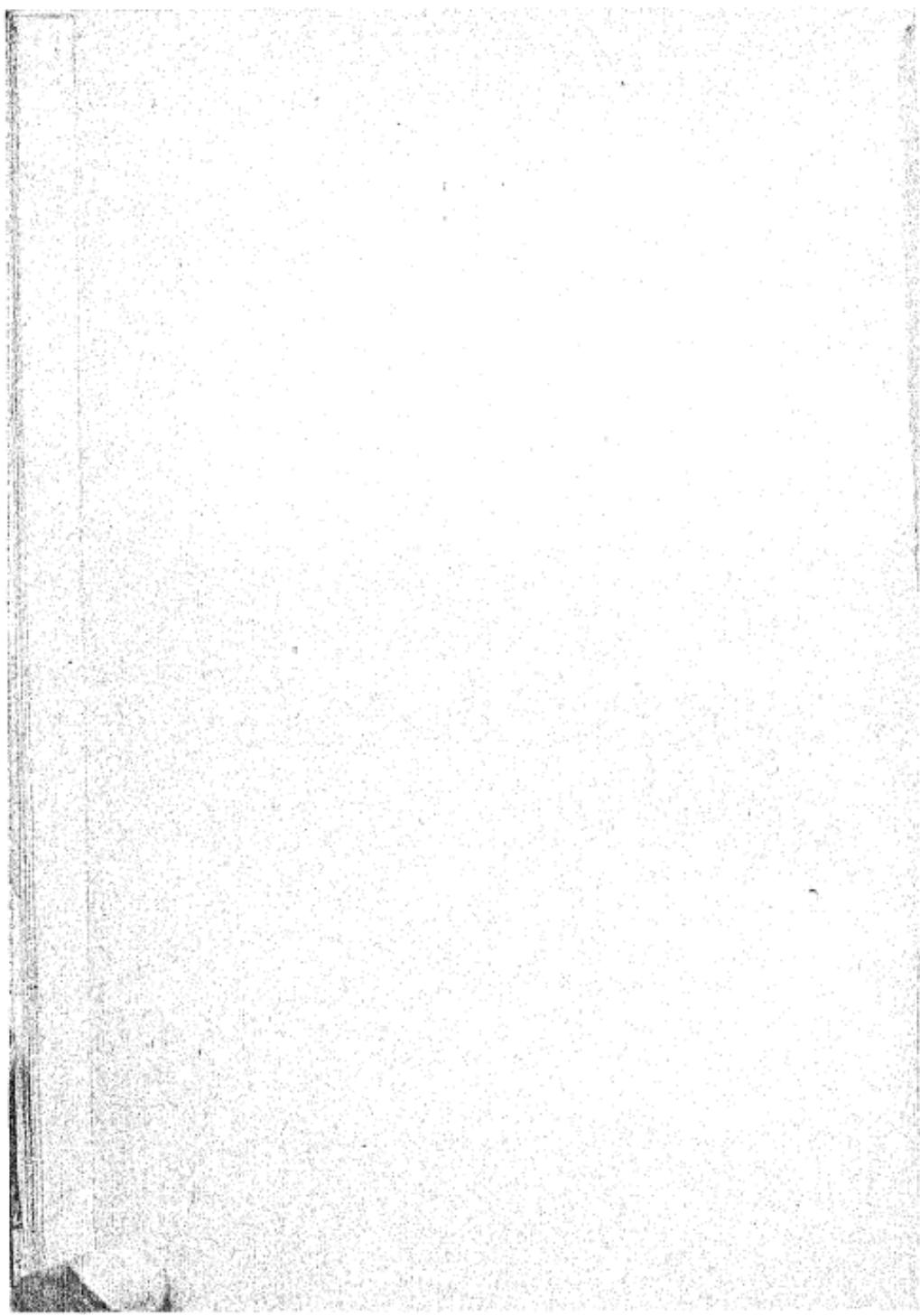
that anti-democratic parties might follow, I have felt it necessary to consider to what extent elasticity can be permitted. Naturally, I could not deal with it fully, since nothing less than a treatise on democracy would suffice.

A Labour Government will thus be immediately concerned to secure means for rapid legislation which will at the same time give ample protection to what will then have become minorities. But it will, as a democratic Government, be concerned also to make Parliament a more effective democratic machine. I suggest that, at the end of its second year of office, it will be more concerned with developing administrative machinery for implementing its legislation than with further measures of reform. It might then turn its attention to the reform of the law in general, and especially to that peculiar part of the law which regulates Parliamentary procedure. It is at this second stage that I hope that my second group of proposals will be of some assistance. They are not part of any Socialist programme, but they are designed to make more efficient the working of the democratic system. They will be of the greater importance if in the meantime new functions, hitherto

exercised by the private enterprise, have been taken over by the State.

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## CHAPTER I

### THE FUNCTIONS OF PARLIAMENT

"GOVERNMENT by the people" has in all countries proved to be a myth. But the proof of it has not, in Britain at least, destroyed belief in the Parliamentary system. The House of Commons may represent the people very partially, but at least it is a kind of representation. Six hundred rather peculiar people cannot, under any system of election, express in themselves the inarticulate and unformulated ideas of forty million people. Our system of election was rough-and-ready in 1918 ; it is more difficult to justify to-day. Yet there are ways through which needs and desires are made known in Westminster. Elected representatives must have their ears to the ground ; and, even if sometimes they seem to hear strange noises, they do, in the mass, give expression to something which is not completely a travesty of public opinion.

The party system enables competing points of view to be put forward. Though argument

does not directly change opinions, it moulds them by a less direct and obvious process. For it creates discussion outside Westminster. "Politics" are talked openly and freely in clubs, in trade unions, in trains, and even in the home. Ideas are formulated which lay, as it were, unconscious. Needs are made evident by the expression of them. Sympathy begets sympathy.

So the discussion radiates from Westminster in waves of ever-decreasing elasticity. Arguments are transmuted, prevented, simplified, perhaps distorted. A "common opinion" develops, and creates new waves which find their way back to Westminster. They set going new arguments in the smoke-room and more formally in the House. In their turn these arguments produce new rays which go back to the ordinary people. In this way there is a constant interchange between Parliament and people which does produce a constant assimilation of opinion. In spite of political differences, the historian can point out, over a sufficiently long period, how common opinion has gradually changed. At any given time principles and policy differ fundamentally, but there is a vast body of accepted assumptions depending largely on social and economic conditions.

This is not, of course, "government by the people." Parliament does not govern. A General Election puts a small body of persons in charge of the Governmental machine. To some extent their ideas determine the action of the machine ; to some extent the machine determines their ideas. The machine governs, but it needs direction. The politicians take control of a vast army of workers, as a captain controls a ship, or a board of directors a great company. The captain does not turn the propeller, nor the board of directors push the train. But control is in itself a vast power. It can be perverted or abused. The Government consists of men. They may have more than ordinary ability and more than ordinary sympathy. They must be busy people, for the machine is vast and its functions enormous. They are subject to great and unusual temptations. Even if they resist them, they will tend to carry out their own ideas, or ideas which are put into their heads by their associates.

The purpose of Parliament is to keep them in touch with public opinion, and to keep public opinion in touch with the problems of government. Public opinion is not necessarily right. It is necessary to govern by public opinion, because only the individual can answer the

problem of his own destiny, and individuals can be treated only in the mass. Even if a Government begins with ideas that are "right" (whatever that may mean), it cannot be trusted to carry them out. There are too many interests at stake, and too many influences at work. On the other hand, public opinion must be educated. It must understand the problems that are being faced and the opposing solutions that may be proposed. The publicity made available through Parliament, and through the varied types of organisation that depend on party politics, enables this end to be achieved with some measure of success.

By reason of its party majority and its power of dissolving Parliament, the Government has control over the House of Commons. No measure is passed without the Government's consent. No important amendment can be made to any measure without the Government's consent. For in either case a defeat of the Government is treated as a vote of no confidence. The consequence will be, either that the Opposition will take office, or that Parliament will be dissolved. The former alternative is to the Government majority a catastrophe. The latter alternative involves nearly all members in substantial expense;

some of them will lose their seats ; the Government may lose its majority. Moreover, to vote against the Government means, for the majority, to vote against the party. Such disloyalty is regarded with disfavour not only by those who control the party machine and by those who are able to forward the member's political ambition, but also by some at least who support him at his election. Thus, party loyalty, political ambition, and fear of losing his seat, combine to persuade the back-bench member on the Government side normally to support the Government. The fear of a dissolution or of the entry into office of the Opposition enables the Government to override even a majority opinion on its own side.

It might be thought that these forces are of no avail when the Government has no majority. They are, of course, substantially weaker. But they still operate. The Government party is likely to be all the more coherent. The third party which holds the balance of power has to be very careful of its actions. For it must normally support either the Government or the Opposition. If it normally supports the Opposition, then the Opposition becomes the Government. If its support alters rapidly, there will be frequent elections until

the two-party system is in substance restored. But the electors dislike frequent elections. Moreover, it is very difficult for the third party to put its case. It gets attacked from both sides. It appears to be fluctuating in its opinions, no matter how consistent with principles its actions may be. Consequently, the third party tends to be eliminated by the electors. Also, if it occupies the middle position for long, it tends to disintegrate as a Parliamentary party. It sheds its extremes. For ambitious politicians cannot contemplate permanent exclusion from the chance of office. In short, though a minority Government is weaker than a majority Government, it still possesses substantial control over the House of Commons.

Thus the function of the House of Commons is twofold. In the first place, it provides a forum for the exposition and the criticism of the actions and proposals of the Government. In the second place, it provides a forum for the discussion of proposals which, it is hoped, can be adopted either by the present Government or by some future Government. In both respects the appeal is primarily to public opinion. No proposal will pass, subject possibly to minor exceptions, unless it is approved

by the Government. But the Government will need to appeal to the people at some time within the next five years. In the meantime, and at all times, it must keep together the Government party. If a substantial body of opinion can be formed in favour of a policy, the Government may accept it. If the Government does not accept it, some of its support in the country may be taken away. Additional strength is thus given to the Opposition, whose leaders may in consequence form the next Government and be ready to carry the policy into effect.

This appeal to public opinion is the most fundamental aspect of Parliamentary action. It follows that Parliamentary procedure must be so adapted as to make the appeal most easy. In the main, it involves a careful selection of matters of discussion, so that fundamental principles may be put in issue. Technical points cannot effectively be "got over." The place for discussions on such points is in committee. Parliamentary debates should be about general principles. At the same time, general principles are frequently inherent in individual cases and isolated transactions. If a prisoner is subjected to "third degree" by the police, only an individual is injured, but there is in

that individual case a gross breach of a fundamental principle. Clearly there must be opportunity for debating such cases. It is not the least of the great merits of the democratic system that it does protect the individual or a minority from oppression. The appeal to public opinion is an appeal for "fair play"; and in a democratic system it rarely goes unheeded.

At the same time, Parliament cannot be concerned only with general principles of Governmental action. Every proposal of the Government involves a multitude of changes either in the existing law or in existing methods of administration. Such changes may involve unsuspected dangers. They may result in injustice to individuals or to classes of persons—whether they be owners of property, trade unionists, or public servants. This aspect of the problem presents itself most obviously where legislative changes are proposed. Every word of a Bill has to receive Parliamentary approval. This means, of course, only that members have the opportunity of suggesting amendments. With rare exceptions, proposed amendments are rejected unless the Government accepts them. Still, to have to justify proposals is in itself a very considerable and

a very valuable limitation upon the arbitrary actions of Governments. It is all the more necessary as legislation becomes more and more technical in character. For such legislation is only in its essential principles the work of Ministers. The details, which are almost as important to individuals, are the work of Civil Servants. The Civil Service is undoubtedly honest and incorruptible. But one of the reasons for that is the close supervision of Parliament. A public official who is seeking to carry out a policy in the public interest is liable to the temptation to override the interest of individuals. The possibility of Parliamentary criticism helps to keep him not only honest and incorruptible, but also just.

The problem is not, however, limited to legislation. The policies which all parties have accepted during the past fifty years imply intervention by public authorities in social and economic affairs. Such intervention can be made effective and just only by giving the public authorities wide discretionary powers. Not every town planning scheme, or slum clearance scheme, or scheme of educational administration, can be submitted to Parliament. The Home Office, the Post Office, the Board of Education, the Ministries of

Health, Labour, and Agriculture, have wide administrative powers. It is largely a matter of historical accident that some changes of policy need legislation, while others do not. Such administrative discretion alone makes government possible ; and it relieves Parliament of much of the detailed labour that in fact it has no time to perform. It is not necessary or desirable that every administrative action should be submitted to Parliament. But it is desirable that attention should be drawn to any administrative action which, while not raising any issue of fundamental principle, appears to work unjustly or ineffectively. It is not necessary that the time of the whole House should be occupied with such matters. But it is desirable that some machinery should be provided for keeping a check on administrative action.

Further, there are some respects in which members of Parliament are more closely in touch with popular needs than the Government Departments. It was said by someone at the worst point of the recent slump that he wished the Departments could be transferred from Whitehall to the North. The senior Civil Servants who had most to do with the formulation of policy lived in the

comparatively prosperous sections of London, which was itself one of the most prosperous areas of England. Their mental climate differed fundamentally from those who were breathing the very atmosphere of the depression. Members of Parliament of all parties who came from the depressed areas had an entirely different line of approach. They appreciated, as the Ministries of Health and Labour did not, what the means test meant in practice. No doubt their point of view was as partial as those who looked out from the comparative opulence of London. But clearly Parliament might have provided a means for the co-ordination of the respective ideas.

Thus, though in respect of administration the primary function of Parliament is to record confidence in the Government, members of Parliament could play a valuable but subsidiary part in checking administration. They could prevent injustices and call attention to needs. They do this rather informally at the present time, by personal importunity and through unofficial committees. But these functions might be more effectively performed if machinery were deliberately established for the purpose. In respect both of administration and of legislation, however, there is a

distinction between principles which need to be brought home to the electorate and details which are of a more technical nature. The former should be brought before the House, the latter should occupy the attention of comparatively few members at a time. That is, there is in principle a distinction between committee work and the work which might reasonably occupy the time of the Whole House.

## CHAPTER II

### PRESENT DEFECTS

THE DISTINCTION made in the previous chapter is not at present recognised by Parliamentary procedure. Like most English institutions, the House of Commons is regulated in accordance with conditions which have long been obsolete. In the eighteenth century the House was concerned mainly with the general discussion of Governmental policy, especially in relation to foreign affairs, and with the passing of private Bills, which were regarded as interesting only special groups of members. In the course of the nineteenth century the functions of Government rapidly increased. This involved a great increase in general legislation. But for most of the century the House refrained from detailed discussion either of Government measures or of private Bills. Where special interests were affected, amendments were moved and discussed. The greater intervention of the State in industrial and commercial affairs substantially increased the interests

affected. Partly for this reason, and partly because the function of the average member came to be work and not oratory, the practice of detailed amendment became common.

At this stage the pressure upon Parliamentary time became evident. For, though criticism of administrative action remained limited to general debates and questions, the legislative functions took an increasing amount of time not merely because more legislation was introduced, but also because members were better able, and more willing, to discuss the details of legislative proposals. Two Standing Committees were set up in 1882, but until 1907 nearly all matters were dealt with on the floor of the House. In the meantime Irish obstruction had resulted in methods of bringing discussion to a close ; and these had to be used more and more, not for their original purpose of meeting deliberate obstruction, but for the purpose of securing a reasonably rapid passing of ordinary legislation. Partly because legislation could not be passed unless members obeyed their whips, and partly because electoral difficulties became very great through the widening of the franchise, party discipline became stricter. The combination of inadequate opportunities for discussion and of

stricter party organisation has tended to turn the average back-bench member into a voting machine. His real work is done, not in the House, but outside, through representation to the Departments and through unofficial committees. The former practice is dangerous, because it may lead to toadying and favouritism. The latter practice is inadequate, because the committees have no access to the effective sources of information ; and it is dangerous because it gives scope to the cranks and to undesirable outside influences. Yet, in spite of the virtual suppression of the legitimate functions of the private members, there is still inadequate time for the passage even of the Bills desired by the Government.

Thus the defects of the present system (apart from the powers of the House of Lords) may be said to be five in number :

- (1) There is at present insufficient time for the passing of more than a fraction of the Bills which the Government for the time being wishes to propose. This assertion cannot be proved statistically, for a comparison between Bills proposed and Bills passed ignores the many Bills which have not been introduced because of obvious lack of time. It is common

knowledge that Bills are jettisoned every session. It is, also, common knowledge that there are Bills which Government Departments are anxious to produce but which will have no chance of passing. There is real competition for Parliamentary time, a competition in which the personality of a Cabinet Minister counts more for success than the urgency of the problem. It is probably true that the common answer that "the Minister regrets that he is unable to introduce legislation on this subject owing to the condition of the Parliamentary time-table" is sometimes a polite way of saying that the Minister does not want to introduce legislation on this subject. But the fact that the answer cannot be contested is an indication that it does in some cases represent the truth.

It is possible to give examples of Bills whose necessity is recognised in principle by all parties, though there would be dispute about the actual proposals. Among them may be mentioned : a Bill to reform Workmen's Compensation law ; a Bill to reform the Factory Acts ; a Bill to consolidate and amend the Rent Restrictions Act ; a Bill to reform London government ; a Bill to reform the judicial system and the law of evidence ; a Bill to

amend the Poor Law ; a Bill to consolidate and amend the Housing Acts ; a Bill to make more rapid town and country planning ; a Bill to extend and amend the superannuation rights of local government officers ; a Bill to amend the Statute of Frauds and many other parts of the common law ; a Bill to consolidate and simplify income-tax law. Every instructed person can add to the list ; but it already contains enough legislation for two sessions without touching upon the subjects which form the basis of party programmes.

(2) Much of modern legislation is very technical in character, and so needs to be expounded or criticised at great length by persons who are competent to do so. It is difficult to find time for the discussions, and still more difficult to find members of Parliament competent to criticise. It is impossible to expect or even desire that there should be among the members experts in every one of the thousands of technical problems raised by legislation on any branch of administrative law. Therefore, apart from the problem of finding time, there is the even more difficult problem of making available to members the technical advice necessary for effective criticism. It is inexpedient to rely only upon the appropriate expert in the

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appropriate Government Department. Experts differ as frequently as laymen, and it does not follow that, merely because he probably has better sources of information, the Civil Service expert is necessarily right. There are experts who understand particular problems of industrial organisation, of agriculture, of local government, or of taxation, at least as well as those who advise the Ministers. And frequently the experts within the Civil Service are in disagreement. It was obvious, for example, that the Ministry of Health differed from the Treasury on the subject of "derating"; and it is equally obvious that the Ministry of Labour and the Ministry of Health have recently had divergent views on the future of unemployment assistance. It is clearly desirable that all the arguments against a proposal should be placed before members of Parliament, as well as those which have been accepted by the Ministers concerned and the Cabinet.

(3) Many of the judicial criticisms of the drafting of legislation are misconceived. Judges frequently appear to suggest that every possible variation of circumstances can be foreseen and provided for, though it is clear that only a general principle and a few of its applications can be put into statutory form. In some cases,

too, judges have difficulty in appreciating technical legislation because they do not understand the technical problems involved. Nevertheless, defects in drafting do frequently occur, partly because of the haste with which much legislation has to be prepared, and partly because a House of 615 members is a most inefficient drafting committee or critic of drafting.

(4) These problems relate particularly to Government Bills. But much desirable legislation cuts across party boundaries, or is unlikely to be introduced because it has no electoral value, or because (though there is a majority for it in the House) the Government hesitates to alienate a substantial minority of its own supporters, or because (as is the case with ordinary private law) no Government Department supports it in the competition for Parliamentary time. Any effective system of Parliamentary procedure must assume that not all desirable legislation will be introduced by the Government.

(5) The present system provides no opportunity for keeping the Government in touch with changing ideas and changing needs. The House of Commons is a mirror in which such ideas and needs are reflected. If closer contact can be established between the Government

and the House without imposing undue burdens upon the Government, there will be closer relations between the Government and the governed. This is necessary not only to enable a Government to ascertain facts and distinguish results, but also to maintain the honesty and efficiency of administration. This function becomes all the more desirable as the discretionary powers of public authorities expand. Legislation is frequently not necessary for a complete change of policy, yet it is desirable that such a change should be made evident to Parliament. It is desirable, too, that the consequences of legislation should be watched by persons who are not concerned in carrying it out, in order that deficiencies and injustices may be remedied.

There are only two lines of development available for meeting these defects. The one involves devolution by Parliament to other bodies. The other involves a reform of the Parliamentary machine. This book is primarily concerned with the latter ; but it is necessary to explain why it is considered that substantial relief cannot be obtained from the former.

## CHAPTER III

### DEVOLUTION

(1) The granting of legislative powers to Ministers is one form of devolution. It differs from the other forms, however, in that it has never been suggested that substantial sections of legislative authority should be handed over. Nearly every Act of Parliament needs completion by the issue of statutory rules and orders ; and it is probable that, in the future, this process will need to be extended in order to relieve Parliament of the task of discussing comparatively unimportant details. But this is a problem closely connected with the ordinary legislative process. It is a problem raised in respect not of special branches of national activity, but in respect of all branches. It has to be considered by the draftsman of every Bill. It is discussed, therefore, in Chapter V.

There is, however, one special kind of legislation to be mentioned here. Private Bill legislation is of a peculiar nature. It has sometimes

been described as administration. This, however, implies a clear distinction between legislation and administration, a distinction which in the modern world does not exist.<sup>1</sup> The distinction is made in this connection because general Acts are usually of general application to all persons, or to a special class of persons not defined by locality, whereas private and local Acts apply to special persons or special localities. The fact that the distinction is drawn does indicate that private legislation is closely akin to many of the acts done by Government Departments under statutory authority. A local Act is frequently of the same nature as a town and country planning scheme. It is often an accident of legal history that one proposal needs a private Bill, while another needs only a Ministerial order.

Private Bills do not occupy much of the time of the House. If they are opposed by members in second or third reading they interrupt public business for a couple of hours. And this happens once or twice a year. The effective stage of such a Bill is the committee stage, where, through most of the session, a few members act in a quasi-judicial capacity listening to arguments from the Parliamentary Bar and deciding

<sup>1</sup> See Jennings, *The Law and the Constitution* (1933), chap. i.

between opposing contentions. There are reasons of delay, expense, and of efficient local government which suggest that the process is undesirable.<sup>1</sup> From the Parliamentary point of view it occupies time which can ill be spared. Members who sit on private Bill committees act not as members but as judges. They exercise functions which, but for the accidents of legal history, would be exercised by an inspector of the Ministry of Health or some other Departmental officer. No constitutional dangers are to be feared if the function is transferred to the appropriate Department. If it is still desired to give members the right to oppose, it is possible to insist that a resolution of both Houses shall be necessary to the validity of any Ministerial order. It may be doubted, however, whether the advantages to be gained are worth the time spent. Even the history of Waterloo Bridge does not provide an argument: and few matters contained in local Bills are of the importance of Waterloo Bridge.

The suggestion that Parliament should deprive itself of the unnecessary duty of passing private Bills necessarily applies to Provisional Orders. These are incorporated into Provisional Order Confirmation Bills, which are

<sup>1</sup> See Jennings, *Local Government in the Modern Constitution* (1931).

not referred to committees unless they are opposed by interested parties. Usually they are not opposed ; so the saving in this instance would not be great.

(2) The advocates of devolution do not usually press for an extension of the powers of the central Departments. They recommend the delegation of functions to representative institutions. Some of them suggest an extension of the powers of local authorities ; some recommend the setting up of new regional authorities ; some advocate the creation of " national " Parliaments for England, Wales, and Scotland ; some favour the creation of a new but subordinate central legislature. Different considerations apply to each proposal.

The problem of devolution to local authorities has been discussed on several occasions since the councils of counties and county boroughs were set up in 1889. The Local Government Act of 1888 contemplated that functions of the central Departments might be transferred by Provisional Order. A transfer of such functions would not, of course, decrease the legislative business of Parliament, but it would decrease the number of subjects which Parliament would discuss on the estimates and on other occasions suitable for the

consideration of administrative business. Thus, even if it were possible to effect such a transfer, the gain in Parliamentary time would be small, and almost infinitesimal. In fact, however, there are no substantial groups of functions which can be so devolved. If devolution makes the local authorities mere organs of the central Departments, it adds to the complication of administration and saves no Parliamentary time. For the administration would be debated in Parliament in relation to the exercise of control powers. If local authorities are to act as "local" authorities, responsible to local electorates, they must have discretionary powers. Nobody has yet pointed to any large group of powers at present exercised by the central Departments which could be left to local discretion. The tendency is in the opposite direction—to bring more and more under central control the discretionary functions of local authorities. Nor is the reason far to seek. Large-scale production, cheap and rapid communication, and the expansion of Governmental fields of action, are bringing into much closer relations all the branches of social and economic life. The acts which people do have consequences far beyond the regions in which they live and work. Misgovernment or

neglect in one area has immediate results elsewhere. Great Britain possibly, and England certainly, has become, not an agglomeration of comparatively isolated areas, but a single social and economic unit. It is not disintegration through devolution that is required, but integration. Devolution of this kind provides no solution.

(3) Devolution to regional authorities is, on its face, a more attractive proposal. Professor Ramsay Muir has worked out on general principles a scheme for devolution to regional authorities for Scotland, Wales, and seven areas in England.<sup>1</sup> A few witnesses before the Select Committee on Public Business expressed a vague approval for some devolution of this kind, though it does not appear that they knew what they meant by it. Moreover, there have been vague suggestions that, when the staple industries are nationalised, regional authorities would be necessary to control them.

This last point should be dealt with first, for it is nothing more than a source of confusion. It may be that the production of coal, of iron and steel, of cotton and wool textiles, and even of agriculture, could best be organised in a Socialist community on a regional basis.

<sup>1</sup> *How Britain is Governed*, chap. viii.

Whether that is possible is for an applied economist to say. But this seems to me to be an entirely different kind of regionalism from that which is contemplated when methods of devolution are discussed. Devolution implies the transfer of functions from an elected House of Commons to another elected authority. It cannot seriously be suggested that an authority elected by the people of Lancashire shall control the production of cotton textiles, and so determine, under the control of a Minister of National Production presumably, what textiles the people of London shall be permitted to buy. The purpose of regional authorities is to perform services for the people of the region, not to produce commodities for the people of the world. The difference is so obvious that it would not be worth mentioning if some of those who talk in generalities had not created confusion.

The problem of devolution to regional authorities in England is a problem of finding some functions at present dealt with, or likely to be dealt with, by Parliament and the central Departments which can without substantial inconvenience be handed over to the discretion of regionally elected authorities. Professor Ramsay Muir takes the functions delegated to

the Parliament of Northern Ireland, subtracts from them certain subjects which "it would seem highly undesirable to transfer to provincial legislatures," and finds himself left with agriculture and fisheries, public health, housing, education, the relief of poverty, the regulation and organisation of local government, the maintenance of order. He points out that most of these are already dealt with by local authorities in this country. He mentions, too, that the organisation of our local government needs consideration, and suggests that provincial legislatures might tackle the problem, and not necessarily in the same way. On the other hand, he considers that there are limits to the amount of variation that could be permitted, and therefore suggests several alternative methods of control.

Professor Muir deliberately refrains from making any precise proposals. But he considers that certain conclusions may be drawn from this discussion. They are : "First, that a large scheme of devolution is quite practical, but that it is only worth undertaking if it is applied, not merely to one or two regions, but to the whole country ; secondly, that in a closely knit country such as ours it would be essential to preserve in an effective way a real control by

the Imperial Parliament over the work of the subordinate legislatures, and that this can be readily done, provided that the Second Chamber problem is satisfactorily solved ; thirdly, that such a scheme would give an immense relief to the House of Commons, and enable it to do more thoroughly the work which it now perforce neglects ; and, finally, that such a scheme would usefully qualify the tendency to excessive centralisation which is one of the most unhealthy features of recent development ; while it might also provide the means for dealing—not necessarily on uniform lines, but with a wholesome variety of method—with the chaos into which our system of local government seems progressively to be falling."

There will be some differences of opinion about the assumptions which underlie these conclusions. But if devolution can attain the third of the promised results—an immense relief to the House of Commons—it is clearly a remedy which demands investigation. Unfortunately, Professor Muir omits to discuss two questions which lie at the root of the problem of devolution. He does not explain what is included in his list of devolvable subjects ; and he does not explain the financial relations between the "Imperial" Parliament and the

regional authorities. These subjects are closely connected. Recent legislation on agriculture and fisheries has involved tariffs, subsidies, and Government loans. Grants are given for public health (though they are now included in the block grants), housing, education, and the maintenance of order. The "relief of poverty" presumably includes, as it does in Northern Ireland, unemployment insurance and unemployment assistance. Is each area of the heptarchy to have its own unemployment and national health insurance system? Are the educational standards of Yorkshire to differ from those of Lancashire, and the standards of Lancashire from those of Derbyshire?

Nor is this all. Would regional authorities operate the committee system, or would there be seven Boards of Education and Ministers of Health and Agriculture? Does not the control of agriculture involve almost exactly the same issues as the control of trade and industry, which Professor Muir leaves to Parliament? Do not housing demands depend upon the movement of population, and does not the movement of population depend upon trade and industry? These questions indicate that the problem is more difficult than Professor Muir makes it. Northern Ireland is

almost as much a social and economic unit as Denmark. The areas in Professor Muir's heptarchy would be purely arbitrary units, not possessing any peculiar social and economic conditions. Federalism is not a means of decentralisation ; it is a means of creating an economic unity while maintaining distinct political units. It is an evil which some countries have to suffer because of existing sectional interests. Its history does not indicate that there are any advantages to be gained by it.

Nor would the relief to Parliament be very great. England is a single economic unit. Co-ordinating legislation would be necessary in respect of each of the devolved subjects. If there were separate marketing schemes, legislation would be necessary for reciprocal arrangements. Officers and teachers would be transferred from one authority to another. Patients would be transferred from hospital to hospital and children from school to school. There would be a new law of "settlement." Public authorities in one area would purchase materials in other areas. And so on. This co-ordinating legislation would occupy as much time as the present general legislation ; indeed, it would be more difficult to introduce

and pass, since every stage would involve long discussions with the heptarchy.

(4) These arguments would not have so much force if the proposal were only to set up separate legislatures for Scotland and Wales. Both are distinct social units. In both there is a measure of decentralisation of administration, though it is much greater in Scotland than in Wales. In both there are local patriotisms which might conceivably justify the additional complication and expense of devolution. Scotland has its own legal system, and in many respects, as in local government matters, special legislation is necessary. But the relief to Parliament would be small. There is little peculiarly Welsh legislation ; and it would take just as long to pass legislation and to criticise administration for England alone as it now takes to perform these functions for England and Wales. Scottish Bills and administrative questions do not take up more than three days a session ; and the absence of a Scottish Standing Committee would not substantially decrease the amount of committee work.

In short, regional devolution or devolution to Scotland and Wales may be desirable for some reasons, but the relief to Parliament

alone would not justify the cost and complication of either kind of devolution.

(5) Before discussing proposals for setting up an Economic Parliament, it is necessary to point out that what is called "functional devolution" is merely a special kind of devolution of administrative powers. It is the granting of powers to administrative bodies. It is, of course, of the greatest importance whether such powers are given to Ministers, to independent boards or commissions, to organisations of capitalist producers, or to organisations of workers. But analytically the powers are of the same kind. They involve the same dangers of injustice, dishonesty, and corruption. The powers must be so limited and circumscribed as to reduce these dangers to a minimum. There seems to be some magic about the words "functional devolution," or "business government," or "workers' control," or "guild Socialism," which induces those who use them to believe that they remove the normal dangers of Government. Supporters of capitalist business seem somehow to assume that business men working a monopoly for their own profit can be trusted with powers which could not be given to Civil Servants working under the control of a Minister responsible to Parliament.

Socialists who favour workers' control in the functional sense similarly assume that trade unionists are free from the temptations that beset those workers who are Civil Servants. The dangers of "bureaucracy" are inherent in all kinds of bureaucracy. Consequently, the problem of delegating powers to such bodies is simply an aspect of the general problem of delegated legislation discussed in Chapter V. It must be repeated that the devolution discussed in the present chapter is devolution to democratically responsible bodies.

(6) Consequently, the only kind of devolution not yet discussed is that involved in proposals to set up Economic Parliaments or other sub-Parliaments. Such a proposal was made by Mr. Winston Churchill before the Select Committee on Public Business. It was not, however, worked out in detail. The fundamental problems involved in such schemes are the same. It will be enough, therefore, to discuss the proposals of Mr. and Mrs. Webb, since they were worked out with the authors' usual thoroughness.<sup>1</sup>

The proposal is to divide the functions of Parliament into two groups, political and social. There would be a Parliament for each of these.

<sup>1</sup> *A Constitution for the Socialist Commonwealth of Great Britain*, 1920.

The Political Parliament would deal with foreign affairs, the supervision of such races and peoples as remain subject to the power of Great Britain, and justice and police. The other functions would be exercised by the Social Parliament. Both would be popularly elected, though it is not necessarily to be assumed that the constituencies, the franchises, the sessions, or the periods of membership would be the same. The division of powers would be determined by statutes, passed in joint session and subject to the interpretation of the courts. Where the functions of both were involved, or where administrative statutes created new criminal offences, legislation by both would be necessary. The assessment and collection of taxes, and financial legislation generally, would be the function of the Social Parliament. The Political Parliament would present its estimates, which would be accepted or rejected, but not discussed in detail, by the Social Parliament. If after conference the two Parliaments could not agree, the amount would be settled by the aggregate vote of the members of the two Parliaments in joint session assembled.

The danger of deadlocks is not ignored by the authors. But they suggest that the same

deadlocks are inherent in bicameral legislatures, and that single-chamber Government is dangerous to the liberty of the individual and places an excessive burden on members and Ministers. They assert also that no one elected assembly can express the general will of the people.

That an elected assembly does not express the "general will" will readily be accepted. The difficulty is that there is no "general will." There is, of course, a majority for or against any specific proposal at any given time. But it does not follow that a referendum taken on Saturday will have the same result as it would if it were taken on the following Monday. (It is said that in the State of Georgia a referendum approved a certain proposal, and the opponents of it promptly submitted a Bill containing a contradictory proposal. This Bill also was approved, and the Supreme Court of the State had to determine whether either, or both, was valid.) Even if the referendum determined the electors' desires, it does not follow that a Parliament elected to deal with foreign affairs only, or unemployment insurance only, or the price policy of a socialised industry, would produce a result acceptable to a majority. Nor is there the least reason for assuming that

elections on different groups of functions would not produce entirely different results. Referenda on the repeal of the entertainment tax, the petrol tax, the tea duty, the duties on wines, spirits, and beer, and perhaps even the income-tax, would probably be favourable. On the other hand, proposals to abolish the services provided out of these taxes would with equal probability be rejected.

Government is a single problem that demands unified control. Foreign policy and trade policy are closely connected, and react upon each other. Internal order depends primarily upon the economic well-being of the masses and a belief in the justice of the economic system. Even the problem of external defence depends largely on the world economic situation. A nationalistic and truculent economic policy can effectively be carried out only if it is supported by powerful armaments and an intention to make war if necessary to the fulfilment of economic aims. On the other hand, a nation that is economically self-dependent can to a large degree ignore the powerful armaments of others.

If it could be assured that every citizen had ample knowledge, and had given full consideration to all the aspects of government,

devices for "direct democracy" would not be absurd. There would then be a "general will"—or, more properly, a majority opinion—on every problem of government. Neither "wills" nor opinions would be dangerous. Such a situation was contemplated by the Greek political philosophers; and the ideas of the Greek philosophers were dominant in the minds of those revolutionary publicists from whom modern notions of the general will and direct democracy have been derived. But in the modern State the necessary conditions are not present. Representative institutions carry out, not the "general will," but the considered opinions of their members. Those opinions are largely determined by the reactions of the electorate to the proposals put forward. But every Government has to take "unpopular" decisions, and every Parliament passes laws that would not be approved on referenda.

The Webbs do not propose a direct democracy. But they justify a division of the functions of Government by the same arguments as those used by its supporters. If the arguments are fallacious, the proposals cannot be justified. For they result in a separation of questions whose solutions necessarily react upon each other. There is no reason why the electorate,

in voting for two Parliaments, even at the same time, should not vote for quite inconsistent foreign and economic policies. If the times of elections are different, the results probably will be inconsistent. A Socialist Political Parliament might find itself faced in a few months by a Conservative Economic Parliament, merely because the Press Lords had had "written up" a political trial in Russia. Consultations between the leaders would be as abortive as such consultations always are. The device of a joint sitting would produce nothing but a fortuitous majority, which was neither "general will" nor anything else but a political accident.

Nor is it easy to see why two single-chamber legislatures are less destructive of liberty than one such legislature. A Fascist Political Parliament would be as tender with Opposition opinions as a Fascist Parliament. A Communist Economic Parliament would have as much sympathy with capitalism as a Communist Parliament. What we might have is both a Fascist Political Parliament and a Communist Economic Parliament !

(7) The fact is that the growing centralisation of the State is a necessary consequence of the growing interdependence of social and economic life. Decentralisation may be justified by

purely political considerations, just as the existence of national States and federal constitutions may be justified by such considerations. But any such decentralisation produces governmental difficulties which should be avoided if the present system can be made to work. I believe that the House of Commons can be made into an effective working body. Devolution appears to offer no remedy. The rest of this book will therefore consider whether the procedure of the House cannot be so reformed as to provide for greater efficiency, and so make it capable of bearing not only the burdens which are now placed upon it, but also any burdens which an increase of socialisation may create. The problem of the House of Lords is not considered. The present composition of that House clearly cannot be justified. Whether a second chamber is or is not retained is a question which is not relevant to my enquiry. Such a chamber will necessarily add to the burdens of the House of Commons, but I leave it to others to consider whether these burdens are likely to be balanced by advantages.

## CHAPTER IV

### ORDINARY LEGISLATION

THE BEST WAY to see how far existing defects can be eradicated is to take each step in the legislative procedure and see how far it is necessary, and how far, if it is necessary, it can be improved.

#### (a) *Drafting*

The drafting of Government Bills is a long process, involving close collaboration between the office of the Parliamentary Counsel to the Treasury and the Department or Departments concerned with the legislation. Much is done, too, by consultations between the Departments and outside interests. The contents of local government Bills are discussed with the associations of local authorities and with such professional bodies as the Institute of Municipal Treasurers and Accountants, the Society of Town Clerks, and the Society of Medical Officers of Health. The contents of industrial bills are discussed with such

bodies as the Federation of British Industries and the General Council of the Trades Union Congress. In other matters, various voluntary associations are consulted. This is a desirable tendency : it enables the Department to absorb the ideas of outside experts, and also indicates some of the interests which need to be placated. It is possible to consult both the Federation of British Industries and the T.U.C. on an Unemployment Insurance Bill or a Factory Bill without necessarily accepting the views of either. It is desirable to hear what they have to suggest, partly because they are aware of the problems involved, partly because their reactions will indicate the line which some of the Parliamentary Opposition will take. In modern conditions it is absurd to believe that members of Parliament represent their constituents alone. All sorts of "interests" have sought and obtained representation, either by inducing the constituency parties to accept nominations, or by establishing relations with members already elected. There need be nothing sinister about this. It becomes sinister only when bribery or similar methods of persuasion are used, or when the member chooses to represent his "interest" rather than his constituency.

A Labour member can represent both his constituency and his trade union, just as a Conservative can represent both his constituency and "the Trade"—provided that in both cases the representation is open and avowed and the exact consideration for representation made clear.

The process of drafting is long and intricate. Not less than three months is at present required on any big Bill. For the Bill has constantly to be travelling to and fro between the Parliamentary Counsel's office and the Departments. Ten to fifteen drafts may be necessary before the Bill is ready for printing. Even a slight increase in the number and size of Bills produced will therefore impose very great strain on the office. Drafting is a very technical job, which requires great experience, and the staff of the office is small. According to the evidence of Sir William Graham-Harrison in 1931, there were in his office four established Civil Servants, all barristers, with four juniors. Each senior draftsman had one junior working with him. Thus it is difficult to draft or supervise more than four Bills at a time—and it must be remembered that the office helps the Ministry to supervise all Bills until they are actually passed.

It is generally recognised that the office has been overworked during recent years, and that it has not always been possible to give proper attention to Bills. It should be remembered in this connection that, if a Bill is hurriedly prepared, mistakes will certainly be found in it after second reading. Amendments will then have to be made in the House, with the result that Parliamentary time will be taken up with drafting amendments, and the drafting itself made less perfect by reason of the very difficulty of amendment. It is very desirable, therefore, that there should be a staff adequate to revise all Bills thoroughly before they are introduced.

But any improvement in Parliamentary procedure which enables more Bills to be passed will throw a greater burden upon the office. And, if great measures of socialisation are introduced, their complication and technical nature will place a burden upon the office which it will not be able to bear. The strengthening of the staff under the Parliamentary Counsel is therefore essential. The work is, however, difficult and trying, and the hours are long (since a draftsman should always be present when a Bill is being discussed in Committee or on report). Comparatively high

salaries must be paid in order to attract competent draftsmen.

Also, some of the recent First Parliamentary Counsel appear to have assumed that no competent legislation can be produced except under their own direct supervision. The result has been to make it an even narrower bottleneck than the size of its staff would suggest. There is much to be said for a competent general supervision. It produces uniformity in drafting, and under enlightened direction it should produce a progressive development of drafting technique. It should be remembered in this connection that the American universities—especially Columbia University and some of the State universities—have performed valuable work in studying the technique of drafting in relation to general social behaviour, to the administrative processes of government, and to the system of judicial precedent. There is not the least reason why an English university or several English universities, could not do the same with the help of a small subsidy.

All this applies only to Government Bills. But if private members produce Bills it is essential that efficient drafting arrangements should be available for them. Many Bills are read a first time and printed only for

purpose of propaganda, and never receive a second reading. To place its resources at the disposal of private members would place a considerable burden upon the office, and would cause unnecessary public expense. It seems clear, therefore, that no private member should have access to the office until his Bill has been read a second time. Two methods of achieving this end are possible. The first is to submit for redrafting every Bill which has been read a second time. The Bill referred to committee must then be assumed to be the same as that read a second time. A certificate of a Parliamentary Counsel that the redrafted Bill contains no new principle should be accepted by either House as an authority for a committee to proceed with its consideration. If, however, a Parliamentary Counsel certifies that new principles have been introduced in order to bring the proposals of the Bill into line with the existing law, this should not prevent the committee from proceeding. The committee should either ask the House for further instructions, or it should continue its consideration of the Bill and attach a special notice on the Report stage calling the attention of the House to the changes introduced.

The second method suggested would be, however, more effective. This is to permit a second reading debate to be held, not upon a Bill, but upon resolutions. This point is discussed at p. 71 below, under "Second Reading." Its effect would be to enable a private member who had no technical advice at his disposal to indicate by resolutions the major changes which he wanted made. Since the second reading debate is, in theory at least, wholly upon the principles, the House could effectively discuss the proposal and, if it approved, could then refer the resolutions to the drafting office for drafting. The committee stage would follow at once.

Any constitutional difficulties inherent in either of these proposals could be entirely eradicated by the setting up of a Drafting Committee, as is proposed below, pp. 96 to 99. They are not in any case of any importance, and Standing Orders should provide both methods as alternatives, whether or not a Drafting Committee is established.

(b) *Introduction and First Reading*

Except for money Bills, which are considered below, the first step is the presentation of the Bill. Any member may either

present a Bill after due notice, or move for leave to bring in a Bill. The latter method involves a general explanation of the Bill and possibly a debate. Except possibly where leave is sought under the Ten Minutes Rule, such a debate is undesirable. The Bill is not yet available to members, and the discussion can be based only on the subject-matter as indicated by the long title. The debate can only produce arguments which will be repeated on second reading, unless they are due to a misunderstanding created by lack of knowledge as to what the Bill will contain. This alternative should therefore be struck out, and all Bills should be presented without leave, except possibly under the Ten Minutes Rule.

Presentation is followed by the first reading. As there can be no debate on this, it may be thought that this stage is unnecessary. But it is in fact a means of giving notice that a Bill is in preparation. Due consideration may then be given to the problems involved, both by interests likely to be affected and by outside experts. Though nothing can prevent the Government from having the best information and the prior knowledge, it is possible and desirable to give others the opportunity of collecting the necessary facts.

Introduction under the Ten Minutes Rule is of a different nature. It is used by private members who have not secured a good place in the ballot for private members' time. It allows a private member to make a short propaganda speech on a subject in which he is interested, and enables one who opposes to make a similar speech. This is one of the few ways in which a private member can create public opinion in favour of a policy which is not likely to be adopted by the Government. It takes up very little time, and it is very useful in keeping a subject to the fore. The law of blasphemy, which is at present a disgrace to any nation, Christian or otherwise, is the sort of subject which needs to be kept before public opinion. So long as it is not enforced, it is innocuous. But so long as the law remains there is always the possibility that some Government may try to enforce it. Yet public opinion may well forget the danger unless it is regularly pointed out. The Ten Minutes Rule is not a very effective instrument for enlightening public opinion, but it is better than nothing, and so should be maintained.

Also, it is possible to make the Ten Minutes Rule an effective means for the introduction of legislation by private members. The present

system, whereby most Fridays are devoted to private members' legislation, is almost always quite futile, and accordingly it is proposed later on in this book (Chapter XI) that it should be abolished. There is at present no means for providing that the Bills debated shall be of some value, and possibly of interest to a majority of members. Private members ballot for priority. Since the introduction of a Bill on private members' day is a good means of securing Press publicity, there are few members who do not take part in the ballot. Frequently, a Bill so introduced is quite useless, and is "killed" when a Minister explains, as politely as he is able, that it is useless. Frequently, on the other hand, a Bill which many members wish to discuss is not brought in because the member who wishes to propose it is unsuccessful in the ballot. Sometimes a valuable Bill is preceded on the Order Paper by a futile Bill, or by a member who is *persona non grata*, so that the House is counted out. And sometimes a valuable Bill is preceded by another, and, because some member objects to the second Bill, he obstructs the passage of the first. It is not too much to say that four times out of five Friday is wasted, and the proceedings of the House bring Parliamentary government into

contempt. Under proposals made elsewhere, in Chapter IX below, opportunities for introducing legislation will be made available to private members. For it is suggested that the present standing committees should be superseded by smaller committees attached to Departments or groups of Departments. A member interested in a subject would probably be a member of the appropriate standing committee, and might be able to induce it to report to the House that legislation on a particular subject was necessary. In any case, a private member could suggest to the appropriate committee, whether he was a member of it or not, that certain legislation was desirable. If in addition it were provided that any Bill introduced under the Ten Minutes Rule and accepted by the House should be referred to the appropriate committee for report, the private member would obtain an excellent means of getting the subject discussed. If the committee recommended that legislation was desirable, the Government in most cases would think it necessary to take the opinion of the House by providing time for second reading—it could, if it wished, leave the matter to a free vote, as it sometimes does on Fridays at the present time. Such a proposal would, of course,

give no opportunity for Opposition members to raise purely party issues. But it is idle to pretend that when the House discusses party issues raised from the Opposition benches it is *legislating*. It is exercising the important function of discussing *policy*: and it is believed that, under the system proposed later on in this book, there will be better opportunities for such policy discussions than exist at present. The proposal now being made has for its object merely the improvement of Parliament as a legislative machine.

(c) *Second Reading*

The second reading is by far the most important stage. Its purpose is to secure a general debate upon the principles contained in the Bill. In this it is usually effective. It is, indeed, the function that the House of Commons is most capable of performing. For, while much committee discussion demands a certain technical knowledge, the average member is capable of appreciating whether the general objects of a measure are such as he can approve. Moreover, adequate preparation is possible. A brief is provided for the Minister in charge of the Bill, and front-bench speakers chosen by the Opposition can consult their technical

advisers and their advisory committees. In addition, the library is available to members ; and with a little care this institution could be made much more effective as a library, and even, if it were adequately staffed, as an information bureau. Proposals for this last development are set out elsewhere in this book (see Chapter X).

It is possible, however, for the Department concerned to give much more assistance than is sometimes now available. Some Bills are prefaced by excellent memoranda—the Bill which became the Children and Young Persons Act, 1932, contained a good example. But this practice is not always followed. Neither the Local Government Bill, 1928-9, nor the Unemployment Bill, 1933-4, was adequately explained beforehand, though they were both very complicated measures. It is essential that members should have, before the second reading debate, an explanation of what a Bill proposes to do, and *why*. This practice would solve, for example, the problem of legislation by reference. Such legislation is most effective ; for it prevents the discussion of already accepted principles, and so saves valuable Parliamentary time. Also, it is much easier for a court to determine the effect of

amendments if they are actually inserted in preceding Acts. The memorandum should therefore explain the general effect of the more important clauses of the Bill, together with the reasons for choosing one proposal instead of its obvious alternative (e.g. the reason for vesting the general control of the Unemployment Assistance Board in the Minister of Labour, instead of in the Minister of Health). References should be included to the relevant official publications, Parliamentary debates, and other relevant material (e.g. "This clause is based generally upon the proposals in paras. . . . of the Final Report of the Royal Commission on Unemployment Insurance ; but it departs from those proposals in the following respects . . . for the following reasons . . ."). If the Bill is produced on the recommendation of a standing committee (as to which see pp. 140-160), the memorandum might take the form of a special report from that committee.

The time devoted to the second reading of any Bill must necessarily depend upon the nature of the Bill. In the case of a Government Bill, discussions between the whips' offices are likely to be the most effective method of determining how long should be given. The ordinary procedure for closure is sufficient to

prevent obstruction. The Speaker should, however, make more use of his power of preventing repetition and should be instructed by the House to prevent the growing practice of reading speeches. There is at present too great a tendency for members to deliver speeches which they have prepared, whether or not their arguments have already been put forward.

Since the second reading is necessarily a debate on principles, it seems quite unnecessary to debate upon a Bill, as is the present practice. Where such a Bill is available, it is, if properly explained by a memorandum, the best possible way of indicating the proposers' intentions. But the need for a Bill has three substantial defects. In the first place, it cannot be read a second time until all the proposals have been thoroughly examined (in the case of a Government Bill) by the drafting office, and all the consequential provisions inserted. For instance, the financial details, the administrative arrangements, the procedure for legal proceedings, and the schedule of repeals have to be thought out and put into statutory form. In the case of any complicated measure, this may take a very considerable time, especially so long as the drafting office remains a bottle-neck.

None of these matters needs to be debated—or ought to be debated—on second reading, yet the present need of having them in the Bill substantially increases the time which must elapse between a Departmental proposal for legislation and the first debate in Parliament.

In the second place, the need to produce a Bill renders difficult the introduction of effective legislation by private members (including members of the Opposition). A private member knows the result which he wants to achieve. He may not know the best means of attaining it. He will lack both the technical advice on the subject with which he is dealing and the professional assistance in drafting. Four things may follow. First of all, the Bill will probably provide for the administrative arrangements being made by the order of the appropriate Minister, whether such a method of legislation is appropriate or not. Secondly, the Minister for the relevant Department may report that while the Government approves the principle of the legislation, the Bill is not aptly drawn to effect the purpose in view, with the result that the Bill is defeated. Thirdly, the relevant Minister may insist that, though the object meets with general approval, considerable amendment will be necessary in committee—

with the result that the Bill fails to pass owing to lack of time, or takes Parliamentary time that could be devoted to other purposes. Fourthly, the Bill may be passed in its badly drafted form or with inadequate or ineffective administrative arrangements.

These considerations suggest that there should be an alternative to second-reading debate upon a Bill. The object would be better achieved in many cases by a debate upon resolutions. If the resolutions were approved the Bill could be prepared by the drafting office (under the supervision of a drafting committee, as suggested below, pp. 96 to 99, if such a committee is set up), and could pass through committee in the same way as any other Bill.

#### (d) *Financial Resolution*

Most Bills involve some charge upon public revenues. Under the present procedure no charge can be imposed save upon the proposition of a Minister made to a Committee of the Whole House. Consequently, the second reading of a Government Bill is followed by a financial resolution discussed in Committee of the Whole House and then reported to the House. The reason for this is primarily

historical. If the King wanted to spend public funds, he approached Parliament through a Privy Councillor, who was a member of the House of Commons, with a request for the statutory authority. The House went into Committee in order to discuss the matter in the absence of the King's representative, the Speaker. If the Committee approved, they reported to the House to that effect, and the House could then go into Committee upon the Bill.

The result is that, after the general debate on the second reading, there is a debate—and there may even be two debates, one on the resolution and one on the report—upon the financial aspects of the Bill. There is of necessity a large amount of overlapping. The second-reading debate on the Unemployment Bill, 1933, was necessarily largely upon the financial aspects. After three days' debate the whole subject had been exhausted. Then came a day's debate on the financial resolution, when the same arguments were produced, sometimes by the same people; and after that a House which had been in session all night spent a morning in listening to the same arguments on the report of the financial resolution. Similarly, any measure for socialisation must largely be

financial in character. Consequently, the present procedure allows for what are, in effect, three second-reading debates.

Some may perhaps be inclined to argue that the debate on the financial resolution provides a means for controlling national expenditure. To this there are two answers. The first is that nearly all legislation relating to the social services and to social control of industry (whether in the capitalist way or the socialist way) is necessarily of a financial character. The second reading is a debate on the advisability of spending public money in the way proposed, or of bringing under public control the income and expenditure of a private business. Legislation of any other character either needs no financial resolution or needs it only in connection with an entirely minor matter. (For instance, a financial resolution was necessary for the Local Government Act, 1933, because of a single clause out of 306 clauses.)

Secondly, the debate on the financial resolution is not used, and cannot be used, to discuss the efficiency of the proposed expenditure. A member cannot discuss whether the money might not be spent more effectively on some other service. And it is only theoretically that

he can discuss whether, given the need for spending the money, the proposed method is the best possible. For this involves technical knowledge which the ordinary member does not possess.

The debate on the financial resolution and its report stage are for practical purposes second-reading debates, subject to artificial rules which sometimes prevent a member from discussing the proposals as a whole. They are an opportunity for a member who has prepared a second-reading speech to make it without any fear of being called to order for repetition. They enable the Minister in charge of the Bill and his Parliamentary Secretary to pick up the political challenges which have been thrown down by the Opposition. As a method of financial control they are quite ineffective.

Effective financial control is certainly necessary. But it is possible only to a committee (not of the Whole House) consisting of members who devote the major part of their time to studying the finance of government, and who have at their disposal competent expert advice. This is one of the functions which could be performed by the Standing Committee on Finance which is recommended below (pp. 126-131).

It cannot be performed by the House as a whole.

These considerations suggest the abolition of the financial resolution as it is provided for under the present practice. Its place may be taken by a resolution of the Standing Committee on Finance, if such a committee is set up. Even if such a committee is not established, the absence of a financial resolution will have no appreciable effect except to make time available for other business. The Standing Committee on Finance, if established, would report to the Standing Committee discussing the Bill, though its report would also be available to the House.

All this relates only to Government business, since no private member can introduce a Bill imposing a charge upon the Exchequer. This rule does not apply, it may be noticed, to prevent a charge on local funds. Actually, cases of such impositions are rare, and more frequently Bills confer powers upon local authorities instead of imposing duties upon them. Also, there are few private members' Bills, other than those amending private law, which will not impose an indirect charge by demanding extra staff in some public office or adding to the work of existing officers. Nevertheless,

it does prevent a member from directly proposing public expenditure which will benefit his constituents or the "interests" which he represents. The temptation to corruption is so great, if the principle is relaxed, that it appears necessary to maintain it. It need not be maintained entirely in its present form. It could be provided, for instance, that no proposal for public expenditure or otherwise connected with the public revenue (e.g. a proposal to impose a tariff) should be made except after a favourable report from the Standing Committee on Finance—a body on which the Government had a majority. Also, it should not apply to Bills promoted by a standing committee, as suggested below (p. 94, etc.).

(e) *Committee Stage*

After its second reading and the report of the financial resolution (if any), a Bill is referred to a committee. This may be either a Standing Committee or a Committee of the Whole House (i.e. the House acting as a committee in the absence of the Speaker). A Bill is referred to a standing committee unless :

- (1) It involves taxation or is a Consolidated Fund or Appropriation Bill ; or
- (2) It confirms provisional orders ; or
- (3) The House otherwise resolves.

In practice, all important Government Bills are considered in Committee of the Whole House. A House of 614 members is entirely incapable of dealing with committee points. But this, from the point of view of the Government, is the real advantage of the procedure. A defeat in Committee of the Whole House is a serious matter. The party organisation is therefore stricter. Voting is controlled by the whips. The Minister in charge dominates the assembly far more strictly. The absence of the "Committee" atmosphere conduces to strict party debates, where every amendment is an excuse for a general political argument. Some speeches, at least, are reported in the newspapers, and all are to be found in the *Parliamentary Debates*.

Proceedings in Committees of the Whole House naturally tend to set the tone for proceedings in standing committees. The comparatively small number of members of the latter—the quorum is twenty—tends, however, to create a different atmosphere. There

is slightly more cross-voting. Speeches are rarely reported in the newspapers, and the "Committee Hansard" is seldom read. Party divisions are not so prominent, and the Minister's own supporters are sometimes willing to vote against him.

If the debates in standing committees differ substantially from ordinary committee work, as this is understood in local government and elsewhere, the explanation is twofold. The strict party delineation prevents that mingling of opinion which is the characteristic of committee work. All real committee work implies compromise; there is little in the standing committees except where the Minister concedes a point which he regards as comparatively unimportant. Also—and this is the second reason—practice in Committee of the Whole House prevents any real discussion on contentious measures. Perhaps, too, there is a third reason—the size of the standing committees, which, though much smaller than a Committee of the Whole House, are much larger than effective committee work demands.

This comparison explains why Governments prefer the Committee of the Whole House. It is a means of legislation by the Government itself. The general principles are agreed by the

Cabinet, the details are settled by a Minister on the advice—less or more positive according to the political importance of the details—of Civil Servants. The Minister or his advisers, or both, may be wrong. They are more likely to be right on technical issues than any member of Parliament who has no technical assistance. Except in relation to ultimate principles upon which public opinion can be formulated and to the *social* effect of legislation, the Minister and his advisers are more likely to be right than a majority of the House of Commons. Thus there is something to be said for a system which enables a Minister, in all but extreme cases or cases involving peculiar prejudices (as where religious issues are raised), to use his majority to secure approval not only of the general principles of legislation, but of the details also.

It must be realised, however, that on any matter which is not definitely a political issue, the rule which becomes law is that invented by a Civil Servant, or by two Civil Servants, accepted by a Minister, and thrust upon Parliament. The Civil Servant, like everybody else, may be wrong. Or there may be a better way of effecting the purpose which he has in view. A member of Parliament with the same

political bias as the Minister may not be persuaded by the technical advice. A member with a choice of advisers may come to an entirely opposite conclusion. Any member of average ability is capable of weighing the advantages and disadvantages of various proposals if he is put into a position to judge them. Also, if it be accepted that legislation by a Department without effective Parliamentary control is desirable, it must also be admitted that the time of the House is wasted by committee discussion on all except major issues, and that the process of legislating by Department Regulations should go a good deal further than it does now.

The scope of delegated legislation is discussed later on (see pp. 109-115). Here it is enough to assert that, if there is to be a committee stage, it should be effective, and not a long series of minor second-reading debates separated by tramps through the lobbies. This means that, apart from the Committee of Supply and/or the Committee of Ways and Means dealing with the estimates (whose position is discussed hereafter, pp. 122-133), there should be no Committees of the Whole House. All Bills should be sent "upstairs" to be dealt with by standing committees.

But standing committees will not be effective unless they are capable of acting as committees. This implies a limited membership. Committees of more than twenty members are rarely efficient. The maximum should certainly be thirty, and the quorum ten. As far as possible they should represent the strength of the respective parties in the House of Commons. Their members should be allocated by the Committee of Selection, and they should contain no members who do not propose to act as such.

The important question relates to their procedure. If they are to be effective they must not act as miniatures of the House of Commons. They must make some attempt to work as a unity, like the committees of a local authority. Purely party debates, followed by party divisions, are quite useless. Moreover, they must have available as good expert advice as that received by the Minister, either directly from the Civil Servant concerned with the matter or indirectly through the Minister. Indeed, if it is possible so to arrange, it is desirable that other expert opinions may be obtained in order that the committee may decide between the experts in the same way as a court of justice or a private Bill committee. Moreover,

the committee must be as specialist in character as a committee of members of Parliament can ever be. One of the major defects of the present standing committees is that Bills are allocated to them, not in accordance with the knowledge of the members, but according to their relative freedom from other work (except in the case of Scottish Bills).

The first reform, therefore, is to make the standing committees more expert in character. Sir Horace Dawkins, the Clerk of the House, suggested to the Select Committee on Procedure on Public Business (H.C. 161, 1932, p. 442) that, instead of the present system of Standing Committees A, B, C, etc., there should be five committees, as under :

1. Internal Affairs and Communications.
2. Social Services.
3. Trade and Industry.
4. Scottish Affairs.
5. Private Members' Bills.

Given general legislation on many subjects (as one might expect from a Labour Government), such a system would be an improvement upon the existing arrangement. But it has the substantial defect that not more than three

general Government Bills could be under consideration at once. For instance, an Education Bill would obstruct a National Health Insurance Bill ; a Coal Mines Bill would obstruct an Iron and Steel Trade Bill, and so on. Given the reduction in the size of the committees which has already been proposed, there would be no greater difficulty in constituting eight committees than is now felt in constituting four.

It seems desirable, from the point of view of legislative procedure alone (other arguments will lead to the same conclusion), that each Department which legislates frequently should have a special standing committee. The Departments are :

1. Home Office.
2. Ministry of Health.
3. Board of Education.
4. Ministry of Labour.
5. Board of Trade.
6. Ministry of Transport.
7. Ministry of Agriculture and Fisheries.
8. Scottish Office.

The Treasury is concerned primarily with the Finance Bill, the Appropriation Bill, and

the Consolidated Fund Bills. These are dealt with later. The other Departments legislate comparatively rarely. Nevertheless, there seems to be no difficulty in setting up a committee for each Department, or a joint committee for a group of Departments where that seems preferable (e.g. Defence ; and Dominions and Colonies). Even if they were rarely asked to consider Bills, they would consist of members interested in these Departments, and available when required. Also, it will be suggested later that such committees should consider other matters.

A small committee consisting of relatively expert members would function very differently from a large committee composed chiefly of members with no particular interest in the subject of discussion, together with a maximum of fifteen members specially appointed. It is nevertheless desirable to make expert advice available to them. Primarily this must come from the Department. It is a serious question whether the Civil Servant should sit behind the Minister to tell him what to say, as he does now, or whether the Civil Servant himself should directly answer questions. The latter method may appear to involve some breach of the principle of Ministerial responsibility, a

principle upon which many people, especially Civil Servants, insist.

Ministerial responsibility in such circumstances may be a blatant fiction. When purely technical matters are under discussion, all that the Minister can do is to pass on the opinion which he received from his adviser. Indeed, the common phrase, "I am advised that . . ." indicates this clearly. It is easier for the Civil Servant to advise the committee directly. For what is wanted is not so much the opinion as the grounds for it. It may be that a member of the committee can refute those grounds. A trade union leader may have more accurate information than an official of the Ministry of Labour. A King's Counsel may give a more probable interpretation than the legal adviser to the Home Office. It is useless to ask the Minister to defend "his" views ; he can only turn to his adviser to ask for an opinion in three words when it cannot be explained in less than a thousand. Moreover, it may be possible—and this is discussed below—to confront expert testimony with expert testimony.

The policy of the Department in any matter, technical or otherwise, must be the policy which the Minister has approved. It does not

follow that Parliament must accept it. Approval of a Government does not involve approval of every proposal which the Government makes. If it does, Parliament should be prorogued as soon as it has approved the King's speech and thereby voted its confidence in the Government. If such a doctrine is accepted, the legislative process is a waste of time, and all legislation should be by Departmental order.

The Civil Servant should thus advise the committee directly. He would express the views of the Department, and for those views the Minister should be responsible. At the same time, he should not necessarily be the permanent head of the Department. A subordinate officer, the head of a sub-department, may be the most competent to advise on some technical point. He would advise along the lines of departmental policy, and internal conflicts of opinion should be settled by the Minister and not brought to the committee. Thus the standing committee would be a permanent "Departmental Committee," and it is not now uncommon for Civil Servants to give evidence before Royal Commissions and departmental committees.

It is not uncommon to find Departments differing among themselves. The Ministry of

Labour and the Ministry of Health have not had the same opinion about the Unemployment Bill of 1933-4. Because the Cabinet has accepted the proposals of the Ministry of Labour, the case of the Ministry of Health has not been put to Parliament. The Cabinet decided the issue as one item among the many items of a long agenda. They had nothing more than memoranda and Ministerial explanation to help them. Probably the Ministry of Health still believes that the Cabinet was wrong ; certainly many outside experts believe that they were wrong. The question is not one of ultimate issues ; it ought not to be a party question. But because the Government has accepted one view and the Opposition has accepted another, it has become a strictly party question. The debate has become largely artificial, and the House of Commons has, without real consideration of the purely technical issues, approved the method of administration because it is one of the Government's proposals.

But if the committee is to give real consideration to the detailed issues involved, it must be able to hear outside evidence. The recent Unemployment Bill again provides an example. The Association of Municipal Corporations, an entirely non-political body, came to a

conclusion strongly antagonistic to the Government's proposals. But they had no direct approach to Parliament. They had to circulate memoranda, to give their opinions to the Press, and to organise a private meeting of members of Parliament. It is surely better that their representatives should directly give evidence to a standing committee which could give adequate consideration both to their case and to the case for the Ministry of Labour. And there are, probably, other people capable of giving expert evidence on, for example, the financial proposals and the prospects of establishing training centres. The Ministry of Labour has not a monopoly of information on such matters.

This proposal is not without its dangers, however. The practice of "lobbying" has already gone further than the comparatively unbiased person desires. The practice of the present Government and of every other Government which attempts to assist capitalist industry implies subsidies, quotas, and tariffs which enure not only to the advantage of "the country" (whatever that may mean in this context), but also—and indeed more obviously—to particular groups of individuals. Those individuals, too, are economically so

important that their political influence is very considerable. The pressure which they can impose upon the members of a capitalist party is always to be feared, and no alteration should be made which might tend to increase it. At the same time, such influence is more to be feared when it flows through secret channels. It is not of the kind which can be effectively used in a committee containing members who are hostile to its exercise. Consequently, I do not think that the present proposal adds to the dangers. If it does anything in this connection, it will bring some of these influences into the light of day. What is more to be feared is that the power of seeking evidence from outside interests will be used as a means of obstruction. The simplest way to prolong the committee stage would be to ask that further evidence be heard. The remedy is for the committee to use its majority to refuse such evidence when tendered. Memoranda of all kinds may be useful ; but unless oral evidence is going to produce further facts it should be excluded. The evidence which could be useful to the committee is that of persons who have made a special study of the problems involved in the legislation, and who will obtain no personal advantage or disadvantage from the proposals

in the Bill. Above all, evidence by paid "experts," whether expert in the subject-matter or expert in the presentation of a case, should be rigidly excluded. The lawyer, whether he wants to state a case or to examine or cross-examine witnesses, is most clearly not wanted. This applies also to so-called financial experts, paid to state a case on behalf of interested parties.

The production of such evidence will involve a lengthening of the committee stage. But whereas at present the time taken is that of the Whole House or of a standing committee of seventy-five members, not more than thirty members would be considering any Bill. And whereas the present committee stage is almost wholly ineffective in producing the substantial amendment of detail which any large Bill requires, the result of minute consideration according to the best expert advice available should be very considerably to improve the nature of the legislation. Since its necessity would have to be proved in any case, a further development of the practice of delegated legislation would be possible. The limits of delegation are discussed below (pp. 109-115). Here it is enough to say that the Committee on Ministers' Powers has unanimously recognised

the need for delegation, and that matters which can be delegated without constitutional danger are mentioned in the chapter devoted to the subject below.

An objection frequently raised to the practice of sending all Bills to committees "upstairs" is that there is no time for them to sit. At present they sit in the mornings. There seems to be no reason why they should not continue to do so. Those who seek election to Parliament must realise that membership is a full-time occupation, and that if they propose to carry on a business or profession at the same time they can do so only by limiting their opportunities for usefulness as legislators. Also, the abolition of the practice of taking Bills on the floor of the House will leave free a certain time which may possibly be utilised for committee work. The present Standing Orders permit the adjournment of the House for this purpose, though the power has never been exercised. Certain days might be allotted for committee work.

It is also objected that the time of Ministers is so fully occupied that they cannot attend any more committees. This is a criticism of the organisation of the Government and not of Parliamentary procedure, and so is not relevant

here. It may be suggested, however, that much greater use should be made of the Parliamentary Secretaries and other junior Ministers. Junior Ministers should be primarily concerned with the legislation promoted by their Departments, and a committee should not normally expect the attendance of heads of Departments.

For reasons already given, the present facilities for the introduction of Bills by private members should be considerably limited. It should be pointed out here, however, that semi-technical measures of the kind which are in fact passed by the House of Commons on the proposal of private members would normally be promoted by members who sit upon the appropriate standing committees. This is one reason for suggesting, as is done in Chapter IX of this book, that the committees should be attached to Departments and should consider administration as well as legislation. If this suggestion is adopted, the committee would propose legislation as well as consider legislation referred by private members. In this way, a private member who had a real improvement to propose could obtain a discussion in the committee, and, if his proposal were approved, the committee could report to the House that

such legislation was desirable. If the Government approved—and under the present system private members' Bills are not passed unless they are approved by the Government—time could then be found for the second reading, the Bill referred to the committee, and the procedure continue as if the original proposal had come from the Government. It would be expected that on semi-technical and non-political Bills approved beforehand by the committee there would generally be no second-reading debate. At present some Bills which are unanimously approved are blessed at length because days are given for them, or because members wish to obstruct the Bill which is next on the paper. Such a waste of time would be avoided, and the opportunities for private members consequently increased. In addition, there would be nothing in the proposed system to prevent a private member who was not a member of the committee from proposing to the committee that legislation on a certain subject was desirable; nor would there be anything to prevent the committee from inviting the member to explain to the committee what he desired, and why.

*(f) The Control of Drafting*

Under the present procedure, the drafting of a Government Bill is the responsibility of the office of the Parliamentary Counsel, and the draftsman continues to advise the Minister until it is finally passed. Private members' Bills which are not taken over by the Government do not necessarily receive any expert criticism, either before or after the second reading. If they are adopted by the Government, drafting amendments may be introduced by a Minister on the advice of a Government draftsman. But, whatever the mode of introduction, the control of drafting after the printing of the Bill is vested entirely in the two Houses of Parliament. Drafting amendments have to follow the same procedure as amendments of substance. Consequential amendments have to be moved and assented to individually.

Now the process of making a Bill intelligible and the process of making good substantive law are entirely different. Also, the former raises no political issues, or indeed issues of principle at all. It is a task demanding expertise only. Drafting and consequential amendments therefore impose upon committees of the

House a task for which they are not fitted, in which they are not interested, and on which they have to spend time that they can ill spare.

These considerations suggest that the task of controlling drafting, so far as it is exercised at all, should be taken away from the standing committees and a general control exercised by some other authority. Certain drafting changes, such as the numbering of the clauses, the mention of cross-references, and the addition of headings and marginal notes, are already made without subsequent Parliamentary ratification. It is desirable that drafting amendments and consequential amendments should similarly be made without taking up Parliamentary time.

The most appropriate authority for this purpose is the drafting office. But Parliament may not be willing to delegate such a function to permanent officials. Also, there are advantages to be gained from having a more authoritative body. For it is desirable for other reasons to obtain a general supervision over the statute book for the production of consolidating measures, the codifying of unwritten law, and the development of a new technique of drafting. These functions should clearly be

performed by a committee responsible to Parliament, though not necessarily composed of, or containing, members of Parliament. If members can be found willing to serve, they would do valuable though unspectacular work, and would safeguard the legislative privileges of Parliament. But there should be, in addition, a group of experts, including the two Parliamentary Counsel and a couple of lawyers, and, if possible, a High Court judge.

Also, it would be possible for amendments to be moved in a different way. Instead of selecting the actual words of an amendment, a member could move "That it be an instruction to the Drafting Committee to insert words providing that . . ." The Drafting Committee could then make the necessary amendments. It could also insert consequential provisions, such as those prescribing penalties, providing for legal proceedings, transferring property, compensating officers, and so on. Possibly the House would not delegate these powers, but would insist on their being reported to the House. Even so, approval would be formal in most cases, and the time of the standing committee would thus be saved.

Further, the Drafting Committee would supervise the drafting of Bills which had been

"read a second time" on resolutions, as suggested *ante*, pp. 71-73.

By these means a flexible system of drafting control would be obtained. Much of the time of the standing committees would be saved, Bills would be better drafted, and a better drafting technique gradually developed.

(g) *Committee Procedure*

If the above proposals are accepted, the standing committees will be more important than they are now, and attention must be paid to their procedure. Suggestions have been made for giving them paid chairmen. But this seems an unnecessary expense, and it would add considerably to the number of Government supporters with official posts who voted for the Government without exercising any real independent judgment. Suggestions have also been made to the effect that, if the Departmental allocation of standing committees is accepted, the Parliamentary Secretary of the Department should act as chairman. But such a solution would impair the independence of the committee. It is far better that the Parliamentary Secretary or his equivalent should be the chief governmental adviser of the committee. On the other hand, the

committee should not elect its own chairman, given the habit of committees to appoint as chairmen their oldest and most venerable members. The function of appointing should therefore be left to the Committee of Selection. It was said in evidence before the Select Committee that there was a shortage of competent chairmen. It is, however, inconceivable that there are not enough competent chairmen among the 615 members outside the sixty or seventy members who hold official posts. Many of them have local government experience or other experience of committee work. It should be noticed that if the proposals in this book (Chapter IX) are accepted, the chairman of a standing committee will occupy a position of very great political importance ; there ought in consequence to be real competition for the post.

With smaller committees whose members need not concern themselves with drafting, committee procedure should be very considerably quickened. Nevertheless, unnecessarily long debates, and even deliberate obstruction, will still be possible. Consequently, while methods of restricting debate should not be used so frequently as in Committee of the Whole House, they should be in existence to be

used if and when necessary. Any member should have the right to move a closure motion, and the chairman should have power to accept it whenever he considered that any clause or any suggested amendment had been adequately discussed. A vote of the committee should of course be taken on any closure motion accepted by the chairman. Also, the chairman should have the same "kangaroo" powers as the chairman of a Committee of the Whole House, and these powers should be constantly used to select those amendments which raise most effectively the point in issue and to exclude mere drafting amendments if a special Drafting Committee has been set up. If there is no such committee, and the standing committee has itself to supervise drafting, "kangaroo" powers are all the more necessary in order to get the Bill into its most intelligible form. At present the normal procedure is for the Minister to accept the principle of the amendment, and to undertake to propose an appropriate working on the report stage. Such a method involves taking the time of the House, and is to be deprecated.

"Kangaroo" powers are also used to limit debate by cutting out overlapping amendments. Under the system proposed later in this book,

the need should be less frequent than it is under the present system. Obstruction should be rare where little publicity is to be obtained for it, and the practice of working together should rub off some of the sharp edges of party conflict. But where obstruction does arise—as, for instance, where socialising measures propose to take property compulsorily—“kangaroo” powers will be necessary. The only objection ever raised to the grant of such powers to chairmen of standing committees is that they cannot be trusted to use them properly. Such an objection is of little force ; and it will have still less force under a system in which chairmen occupy a position not much less important than that of a junior Minister.

The only really effective method of limiting endless debate is the “guillotine.” It is, however, a dangerous machine for those who use it as well as for those who suffer under it. Limitation of debate can so easily become the stifling of debate, and debate is of the essence of Parliamentary democracy. It is quite certain that a committee cannot be trusted to formulate and apply a guillotine motion to itself. On the other hand, it is not unreasonable for the House to ask that a Bill shall be reported on a certain date, and to impose a guillotine in

order to see that the various parts of the Bill are adequately covered. Nor is it unreasonable for a committee which finds its proceedings being held up by obstruction to request the House to grant it a guillotine motion.

The guillotine should not be granted, therefore, except by a resolution of the House. And it might cover all stages of the Bill after the second reading. Proposals have been made for delegating to a special committee the task of allocating the time. There seems little advantage in this procedure. The Government must determine the total time allocated in order to get its legislative programme completed. The details can be left for discussion between the whips' offices, as at present. A formal committee would not be any more effective than such informal discussions, and would have the disadvantage of appearing to cast upon the Opposition some of the responsibility for the guillotine motion. There is need, however, for more frequent discussions between the whips, and it is suggested that the whips should consult the chairman of the committee and two or three members with special knowledge of the problems involved in the legislation. The whips themselves do not necessarily know anything about the real issues

which underlie the legislation, and they could make a more effective allocation of time if they understood more clearly the points on which debate would probably take longest. It has to be realised in this connection that obstruction most frequently comes not from the official Opposition, but from professional obstructionists, woolly-minded talkers, and representatives of special interests. Parliament cannot prevent the constituencies from returning such members—especially when they are rich and are able to buy safe seats by contributions to local charities and to the local party organisation—but at least the Government and the Opposition can combine to prevent the time of the ordinary member from being wasted in lengthy and futile discussion. Obstruction by an Opposition party as such is of a different nature, and is a justifiable use of the Parliamentary machine. The Government must use its majority to overcome it with the usual political results.

Also, the present system of applying the guillotine, as the debates on the Unemployment Bill have shown, is too inelastic. For any measure of such complication and raising such controversial issues, there should be

"free days" unallocated to particular parts of the Bill, but available for the discussion of issues for which there has been inadequate time. A supplementary guillotine motion could then allocate these free days. The time-table, too, should not necessarily be regarded as indicating the time to be spent on particular clauses. If the debate on any clause can be brought to an end by the acceptance of closure motions or otherwise before the end of the allocated time, this should be done, in order to allow more time for the discussion of other parts of the Bill. The chairman should not consider that, because the House has allocated time, he should not use his "kangaroo" and closure powers in exactly the same way—subject to the maximum provided by the guillotine—as he would if there were no guillotine motion. In particular, he should be ready to accept a closure motion whenever it was obvious that debate was being prolonged on a particular clause in order to burke discussion of a subsequent clause or to enable the Opposition to say that the Government had deliberately prevented discussion of that subsequent clause.

*(h) Report and Third Reading*

The report stage of a Bill is taken on the floor of the House, and provides a further opportunity for effecting amendments. The House is no more appropriate as an amending body at this stage than it is at the committee stage. But there are difficulties involved in combining the report stage and the third reading and forbidding amendments. For the Bill as amended by the standing committee may well prove so unacceptable to the House as a whole that they may be prepared to reject it; whereas a few amendments may be sufficient to make it acceptable.

An alternative is to permit only a motion for referring back to the committee with instructions to amend. But such a rule would save no time: for the debate would be on the motion to refer back, and so would occupy the time of the House as fully as the amendments themselves.

Certain of the changes proposed in previous parts of this book would, however, greatly reduce the importance of the report stage. In the first place, the greater flexibility of small committee procedure would permit of the Bill being reported in a more finished

state. A Minister would not accept the principle of an amendment and undertake to submit a form of words at the report stage. Nor would an amendment be withdrawn in committee in order that the Minister might consider whether it could be accepted on report. In the second place, drafting amendments would not be moved on report, since the task of altering the drafting would be left to the Drafting Committee.

The report stage should thus be comparatively short. Few Bills should occupy more than a single day for report and third reading. And these should be taken together. It is unnecessary to move the clauses in chunks, with a possible division on each. The motion should be "That the Bill as reported be read a third time." To that would be moved the various amendments. After these had been accepted or disposed of, the motion "That the Bill as reported (and amended) be read a third time" would be debated. This combination would abolish the present practice of having a general debate on the operative clauses on report, which is repeated on the Bill as a whole on the third reading.

Since one day should normally be ample for report and third reading, a rule to that

delegated powers of the exceptional type—e.g. powers to legislate on matters of principle or to impose taxation—only on exceptional grounds.

The committee proposed also a special standing committee of each House to consider and report on Bills conferring legislative powers and on rules and regulations laid before the House. The function is one calling for knowledge rather of drafting practice than of the substance of the legislation. The purpose of the committee is to draw attention to unusual features, and especially to point out where proposed legislation or rules conflict with the principles laid down by the Donoughmore Committee. It therefore seems appropriate to allocate the function to the Drafting Committee.

The problem more germane to the present book is, however, the extent to which further delegation can reduce Parliamentary congestion without offending against essential constitutional principles. It is suggested that normally the following provisions may be left to Ministerial Regulations :

1. Administrative organisation, except in so far as it involves matters of principle—e.g.

the administration of a service through a statutory corporation ;

2. The transfer of property from one administrative authority to another ;

3. The transfer of officers from one administrative authority to another, and the compensation of displaced officers ;

4. The forms and methods of accounting and audit ;

5. Public enquiries and the procedure to be followed thereat ;

6. Legal proceedings.

An emergency delegation of legislative powers, such as might be necessary when a Labour Government assumed office, raises rather different issues. The fact that special emergencies demanded peculiar remedies was recognised by the Committee on Ministers' Powers (Cmd. 4060, pp. 52-3). They gave as examples the Defence of the Realm Act, the Emergency Powers Act, 1920, and the financial legislation of the "National" Government

in 1931. They could find no more precise principles of limitation than the proposition that "it is of the essence of constitutional government that the normal control of Parliament should not be suspended either to a greater degree, or for a longer time, than the emergency demands."

Truism though this statement is, it is essential to democratic government. A Labour Government which had a mandate for socialising the major instruments of production and distribution would be justified in taking powers to prevent sabotage by an interested minority. It is obvious that if a measure of the complication of the London Passenger Transport Act were necessary for every industry to be taken over, the present complication of Parliamentary procedure, and especially the existence of the House of Lords, would give ample opportunity to the City of London to create such financial difficulties that all progress would be stopped and the energies of the Government directed solely to maintaining the existing state of affairs.

The task of putting the House of Lords *hors de combat* is not a problem to be discussed here. The need of adapting the procedure of the House of Commons to the occasion is. Here a

distinction must be drawn between the powers necessary to transfer existing capitalist enterprises to public control and the powers necessary to prevent sabotage by a minority. The latter are penal powers in all respects similar to those taken by the Coalition Government in the Emergency Powers Act, 1920. An amendment to that Act, providing, however, for different remedies, would adequately meet the case. It should be a temporary Act only, needing renewal at the end of a period not exceeding two years : and it should be strictly penal.

The powers necessary for transferring industries, on the other hand, are analogous, not to those contained in the Act of 1920, but to those given by the Economy Act, 1931, which was passed at the request of the first "National" Government. That Act is, however, a bad precedent. For in the first place it gave no indication of the action which the Government proposed, and so resulted in a temporary dictatorship. And, in the second place, though the Act itself was temporary, the regulations under it received permanent validity. Consequently, while the increase in the income-tax and other taxation measures were temporary only, and demanded the introduction of further legislation within six

months, the "cuts" in salaries and insurance benefit and the increase in insurance contributions were permanent. The difference is that whereas the Government had later to secure Parliamentary sanction by Bill for its measures of taxation, it has never needed to introduce a Bill for sanctioning the other changes. They were not effectively discussed until proposals for reducing them were introduced in 1934.

Such a measure is grossly unconstitutional, since so long as the "National" Government is in power the House is denied the opportunity of debating the main "emergency" measures of 1931. No private member could propose the restoration, for instance, of the teachers' and Civil Servants' salaries, even when the Government proposed a partial restoration in 1934.

It is possible to adapt the precedent in such a way as to act strictly in accordance with the principle of democratic government. By the end of the present Parliament the Labour Party will have prepared the main outlines of its proposals. The Bill should indicate what industries are to be taken over and to what sort of body each is to be transferred (e.g. to a Minister responsible to Parliament or to a statutory corporation). It should also set up a tribunal for assessing compensation. And it

should contain a provision for setting aside by resolution of the House of Commons any decision of the courts to the effect that an order was *ultra vires*.

The Bill should apply only to those industries whose immediate transfer was necessary ; and all the provisions above would occupy at most a dozen sections. The administrative details and the provisions for assessing compensation should be made by Orders in Council, which should be temporary only unless ratified by resolution of the House of Commons.

## CHAPTER VI

### CLAUSES ACTS

ONE METHOD of shortening Bills without depriving Parliament of its legislative functions has never yet been effectively applied to Bills which grant powers to public bodies. A study of modern administrative statutes indicates that they all contain transitional provisions and provisions for administrative action which tend to follow common forms. They cover not only those matters which have been indicated as suitable for delegated legislation, but also such matters as the compulsory acquisition of land and borrowing. Much time is spent in discussing these provisions, though in the end the changes made are insignificant.

A similar problem in relation to private Bills was met in the 'forties by the enactment of a number of "Clauses Acts" whose provisions could be incorporated by private Acts. In relation to local authorities a step has been taken in the same direction by the enactment of the Local Government Act, 1933, which has

generalised many provisions formerly applicable to separate services, and has provided rules on the acquisition of land, accounts and audit, borrowing, transfer and compensation of officers, transfer of property, and local enquiries, which can be incorporated by reference into Bills dealing with local government. In the event of the creation of a number of other statutory public bodies, a Clauses Act should be passed at the earliest possible moment. Attention should be drawn particularly to the need for general provisions for the acquisition of land, the compensation of goodwill, the buying out or conversion of stocks and shares, and the transfer of movable goods, investments, and employees. Much time may be saved on the provisions of special Bills if a general Clauses Act is passed first.

## CHAPTER VII

### FINANCIAL LEGISLATION

MUCH OF THE TIME of the House is spent in the annual financial legislation. This consists of : (1) supplementary estimates leading to a Consolidated Fund Bill ; (2) votes on account leading to a Consolidated Fund Bill to cover the period from the beginning of the financial year to the end of July ; and (3) the annual estimates and Budget statement leading to the Finance and Appropriation Bills. In all cases the proceedings begin in Committee of the Whole House ; and, indeed, this is the essential stage, for the proceedings on the Bills are of much less importance. There are, however, two such committees, the Committee of Supply and the Committee of Ways and Means. They consist, of course, of the same persons, but they have different functions to perform. The Committee of Supply examines the estimates and reports them to the House, so that they may be incorporated in the Appropriation Bill or Consolidated Fund Bill. The Committee of

Ways and Means examines proposals for paying out of the Consolidated Fund the sums necessary to meet supply, and also considers what taxation is necessary to provide the money for the purpose. Its discussions lead to the Finance Bill or to similar provisions in Consolidated Fund Bills. This distinction is purely historical and serves no useful purpose. Though it takes no more time than would a simpler system, it adds a strong element of mumbo-jumboism to Standing Orders and so makes them less intelligible.

Supplementary estimates are necessary when a new service is provided or when the cost of a service authorised by the previous Appropriation Act has been under-estimated. If a new service is to be provided, there may be a discussion on it. But in the great majority of cases it has already been discussed *ad nauseam* on the Bill authorising the administrative machinery. There are occasions when no such Bill is needed, but these are exceptions. For the most part, therefore, this time is wasted, since it duplicates a debate which has already taken place. If the vote is necessary because of an under-estimate, the debate is always futile. For the main service may not be discussed, only the supplementary estimate being in

issue. The result is that every year the House spends three, four, or five days in discussing petty items of minor policy. It will spend a day on a vote for £20,000, while four months later it may be compelled to pass £20,000,000 without discussion. It should be added that supplementary estimates provide opportunities for obstruction, since they do not come under a time-schedule.

It is clear that debates on supplementary estimates serve no useful purpose and should not be taken on the floor of the House. It is, however, necessary that over-spending and under-estimating should be carefully watched. This is one of the functions which a Standing Committee on Finance could perform. Such a committee, as has appeared, and as will appear, would have other important functions to perform. It would be in as close touch with the Treasury as the other standing committees should be with their Departments. The Financial Secretary to the Treasury should normally be in attendance, and it should be able to take evidence from officers of the Comptroller and Auditor-General as well as from officers of the Treasury.

Supplementary estimates cover a gap between the end of the funds estimated and the

end of the financial year. Votes on account meet the needs of the Departments between the 1st April, when the financial year begins, and the passing of the Appropriation Bill about the 5th August. In theory, therefore, the debates on votes on account should be as comprehensive as the debates on the estimates. But in fact this stage is largely formal. After some estimates have been considered in Committee of Supply, a vote on account is taken in Committee of Ways and Means. The time spent is not substantial. But all this adds to the complication of Parliamentary procedure without adding to its efficiency. A vote on account for the Army or for the Navy may be used for any branch of those respective services. There seems to be no reason why this should not be generalised. A single vote on account should be sufficient to authorise any expenditure up to the 5th August. Also, just as a special Act is not now necessary (since the Provisional Collection of Taxes Act, 1913) to authorise the levying of taxation after the 1st April, a Consolidated Fund Bill should not be necessary to authorise expenditure. A general statute should be passed giving the force of law for a period of four months to any vote on account.

*The Estimates*

No doubt the theory is that in discussing the ordinary estimates control should be exercised over the national expenditure and the financial policy of the Government. Not only is this not done, but the House has neither the time nor the knowledge to attempt the task. The function requires a knowledge of the internal organisation of each Department and of its peculiar problems which the House as a whole cannot possess. The House cannot, without discussing general policy, suggest effective economies. It can do more than the Select Committee on Estimates has done hitherto. That function is one for the Standing Committee on Finance, and the House itself can do no more than discuss the general policy. Even a Departmental Committee, like the Geddes Committee or the May Committee, can do no more than find policies which it dislikes and suggest a reduction of expenditure by reducing services. A standing committee like the Select Committee on Estimates can do something, because it gradually acquires the necessary technique and is able to use expert advice.

In practice, therefore, discussions on estimates are discussions of Governmental policy.

The Opposition asks for a vote to be put down because it wants to criticise some aspect of the Government's policy which is topical. It discusses disarmament by asking for an Army vote ; it discusses the League of Nations on a Foreign Office vote ; it discusses unemployment on a Ministry of Labour vote. On the whole the system does not work badly. The discussion of general policy is the function of Parliament, and it is the one function which Parliament does well. But there is one considerable limitation. Because the theory persists that Parliament is discussing expenditure and not policy, no proposals for legislation may be made, and no discussion may take place as to desirable legislative changes. This limitation creates an artificial restriction of debate which is of no value, and it should be swept away.

It may well be asked whether a debate on the estimates is necessary. An Opposition motion, it may be said, would serve the same purpose. This is not so, however. Though the Opposition asks for a vote to be put down in order that it may discuss some topical subject of major importance, the debate is limited to the subject-matter of the vote, and not to the point which the Opposition has in mind. Consequently, private members need not follow

the Government and the Opposition. They can raise any relevant subject. And occasionally a private member may thus give a twist to the debate which produces facts or arguments of considerable importance. It is undesirable that all debates should be staged as a conflict between the Government and the Opposition—a conflict in which a Government with a majority must win. The occasional superiority of a debate in the House of Lords over a similar debate in the House of Commons is due to the fact that a few members of the former House have special knowledge on a few subjects, and are able to produce them without first having them discussed at a party conference. It is desirable that members with independent points of view should have an opportunity of expressing them.

Twenty days are allowed for the estimates. Such a period enables the House to cover all the important Departments and to emphasise two or three of them by having votes adjourned and put down again. The present practice of tramping through the lobbies on the last day in order to vote upon all votes undisposed of should, however, cease. It has no object except to enable members to increase their toll of divisions ; and it wastes valuable time.

All votes not passed at the end of the twenty days and not rejected should be voted upon *en bloc*.

The days occupied in Committee of Ways and Means in discussing the Budget statement are not ill spent. They enable the House to survey the whole field of national expenditure and the taxation which is necessary to meet it. They do not result in proposals for the alteration in detail either of expenditure or of taxation. They do, however, permit of that general discussion of principle which is the real function of the legislature in relation to the administration. The only point for consideration in this connection is what taxes should be imposed by permanent Acts and what by the Finance Act, since Ways and Means resolutions are necessary only for the latter. The old practice was to have two temporary taxes only—the income-tax and the tea duty, representing direct and indirect taxation respectively—but modern conditions have altered this practice. The Chancellor of the Exchequer has so many alterations to propose that it is usual to find all the more important “permanent” taxes altered, and so discussed.

Varying taxation is unsettling to the individual as well as to industry. There is much

to be said for the point of view that individuals and trading and manufacturing companies cannot plan ahead if they are uncertain of their overhead charges, or, in the case of tariffs, of what degree of State assistance they may expect. At the same time, the consequences of taxation have constantly to be examined, since their effects upon the consumer can rarely be accurately forecasted, and, in addition, the ingenuity of taxpayers in constantly finding new methods of evasion. From the point of view of saving Parliamentary time, there is little benefit in "permanent" taxes.

On the whole, the better plan seems to be to reconsider every tax every year. Stability of taxation should be a matter of Treasury policy. It cannot effectively be obtained by Act of Parliament. There is no difficulty either in accounting "five-year plans" or in making long-term agreements for tariff impositions and remissions, provided that it is recognised that all such plans and agreements are subject to Parliamentary control, and that a plan or agreement made by one Government does not bind the next.

Neither the Committee of Supply nor the Committee of Ways and Means is competent to examine the estimates in detail. No

Parliamentary committee can be as effective as the Treasury, and it is undesirable that any attempt should be made to transfer the control from the Treasury to Parliament. Such a transfer would produce endless delay, resulting, probably, in the unbalanced Budget of the normal French system. Nevertheless, it is desirable that rather close attention should be given to the details of the estimates and the proposals for taxation and other proposals which go into the Finance Bill. This should be one of the tasks of the Finance Committee, a standing committee attached to the Treasury and similar to the other standing departmental committees.

The Treasury should submit a body of estimates to the Finance Committee as soon as they have been approved. It is unnecessary to wait, as is now done, until all the civil estimates or army or naval estimates are ready. Since the estimates are normally submitted formally to the Treasury on the 1st December (informal discussions having already taken place) it should be possible for some estimates to be submitted to the Finance Committee by the middle of January. The Finance Committee should be set up at the beginning of the session, and should be authorised to sit during the

recess, or, if the new session begins in the new year, even while Parliament stands prorogued. It should be permanently in session, since it will consider not only the estimates and the Finance Bill, but also the financial provisions of other Bills and the audited accounts when they are presented by the Comptroller and Auditor-General.

The functions of the Finance Committee in relation to the estimate should be primarily to seek information. Financial proposals, unlike legislative proposals, are a unit, and stand or fall together. Consequently it is not to be expected that a Finance Committee should have as close a control over financial proposals as any other standing committee would have over legislative proposals. It should have before it representatives of the Treasury, of the Department whose estimates are under consideration, and of the Comptroller and Auditor-General. It should seek enlightenment as to any unusual features or unexpected increases. It should not find necessary specific approval or disapproval of any vote, but should report to the House any matters which call for comment. It should, also, follow the same process with the audited accounts. It would thus soon possess a body of quasi-expert members. It

would be in a position to suggest changes to the Treasury. It would be a court to which the Comptroller and Auditor-General could appeal against the Treasury. Without interfering with the ultimate financial responsibility of the Government, it would prevent the domination of the point of view of the Permanent Secretary to the Treasury. It could, if it pleased, submit questions for report by the Economic Council or any similar body of outside financial experts. It could, where there was time, take evidence from outside experts.

Thus, the function of the Finance Committee in this respect would be to inform the House. It would give the House the facts necessary for an adequate discussion of the general principles of financial policy. For instance, it could find out what exactly is the present incidence of taxation, what are the advantages and disadvantages which the taking of sterling off the gold standard have produced, how far existing methods of taxation are being used for the profit of individual interests, and so on. It would be a permanent Colwyn Commission and Macmillan Commission combined. It would not, however, take the place of the Treasury. The Government must have ultimate financial control, and the Treasury is its

instrument. In saying this, I must not be taken to assert that present Treasury control is effective, or that its rule-of-thumb method of reducing estimates is anything more than irritating and futile. But the problem of making Treasury control effective is outside the scope of this book, and I am assuming that, since the present system needs reforming, other steps will be taken to that end. For effective Treasury control is necessary, and it cannot be superseded by Parliamentary control. In this connection I would draw attention to the way in which, as Mr. Lloyd George and Dr. Addison have shown, the Ministry of Munitions succeeded in curbing the gross extravagance—out of which the armament firms made large profits—of the Service Departments. Such methods of financial reform might be strengthened by the collaboration of the Finance Committee. For instance, the Departments have not yet adopted the practice, which is now followed by all large local authorities, of having an independent estimate by a cost accountant of the cost of providing materials which are put out to contract. The existence of “rings” makes the tendering system quite illusory in many cases, and some Government Departments do not even invite tenders. An

efficient system of cost accounting would be an effective means of Treasury control. In addition, the reports of the cost accountants should be available to the Finance Committee, who would report to the House any Departmental extravagance. For the problem is one of major policy ; and where free competition was found not to exist, or where for other reasons production by private enterprise was unsatisfactory, the Finance Committee might suggest State production or manufacture.

The main heads of the estimates are subsequently scheduled to the Appropriation Bill. Since this Bill contains nothing except general provisions for the expenditure of a gross sum in accordance with the estimates, and for the borrowing of money, it serves no useful purpose. The borrowing powers of the Treasury should be placed on a permanent basis ; and where extra powers are sought they should be placed in the Finance Bill. Also, it would be a simple matter to pass a general Act giving the force of law to the estimates when passed by the Committee of Supply or (if the distinction is to be maintained) approved by the Committee of Ways and Means. If, however, this is not done, a third reading alone is necessary for the Appropriation Bill, since the estimates

have already been fully considered in Supply (and Ways and Means), and the general financial position of the country is considered, not upon the Appropriation Bill, but upon the initial stages of the Finance Bill.

If the Finance Bill contained only the reimposition of the annual taxation and the amendment of the "permanent" taxation, the same procedure could be followed, except that (a) an annual Bill would certainly be necessary in order to permit the House of Lords to discuss it; and (b) the Drafting Committee would need to supervise the drafting. But usually the Finance Bill contains, in addition, provision for the management of the National Debt and the Sinking Funds, and sometimes it deals with the Consolidated Fund or the method of tax administration under the Commissioners of Inland Revenue or the Commissioners of Excise. The duplication of discussion which follows the present procedure could be avoided by dividing the Finance Bill into two Bills—the Taxation Bill and the Financial Administration Bill. In the former could go provisions for taxation as approved by the Committee of Ways and Means. Second reading, committee stage, and report stage of the Taxation Bill would thus be avoided, since all matters except

drafting would have been discussed in Ways and Means ; and the Bill could be passed on a formal third reading only. But the ordinary procedure would have to be followed with the Financial Administration Bill, the committee stage being taken upstairs in the Finance Committee. Though this process would help to clear the statute book by separating the temporary and the " permanent " provisions, it is unlikely that any time would be saved.

It seems, therefore, that the Finance Bill should follow the ordinary procedure of a public Bill. The committee stage would be unnecessary, since the principles would have already been accepted by the House in Ways and Means. The taxation clauses should be in Part I of the Act, which should be in force for the financial year only, and should be called the Taxation Act ; the other clauses should be in Part II and should be called the Financial Administration Act. This would have the same effect upon the statute book as two Acts, and would follow recent precedents in other kinds of legislation.

## CHAPTER VIII

### GENERAL ADMINISTRATIVE POLICY

THE DEBATES on the estimates and on the Ways and Means resolutions produce the chief opportunities for the general discussion of the policy of the Government. But these debates are held between the middle of February and the middle of June, or thereabouts. It is necessary to provide ample time for general policy debates at other periods. Such debates may appear to be fruitless, since a Government with a majority is bound to be successful. But in truth there is nothing a Government dislikes so much as unpopularity ; and the smallest Opposition can, by placing before the country the iniquities and shortcomings of the Government, not only educate the electorate ready for the next occasion when its support will be sought, but also directly affect ministerial policy. Though the debates are nothing but talk, it is talk that changes opinions.

The opportunities available for general

discussion, apart from the estimates and Ways and Means resolutions, are seven in number.

(a) *The King's Speech*

The policy of the Government as a whole, both administrative and legislative, is discussed only at the beginning and at the end of a session in the debates on the King's Speech. These are valuable and essential debates, and no alteration need be suggested.

(b) *Getting the Speaker out of the Chair*

When the House first goes into Committee of Supply on the Civil, Navy, Army and Air Force Estimates, a debate takes place on policy in relation to the relevant estimates. Motions are moved by private members, who ballot for priority. The subjects may or may not be important or really relevant to topical problems. They may or may not merely be bees which the successful members have in their bonnets. In any case, to give three debates to the Services and only one to the rest of Governmental policy is ridiculous in these days.

In these circumstances it is doubtful if the discussions are of any value whatever. The time could be better spent on a single debate on the whole of Governmental policy, the subject

or subjects being chosen by the Opposition. The Speaker is moved out of the Chair about the middle or the end of February. If the session begins in November and ends in July, this is approaching half-way through the session. At about this time the Opposition generally feels the need for a general debate ; and frequently time is taken either by the Government allowing time, or by a vote of censure. The private member who wants to discuss the inadequacy of the Navy can deliver his speech on the motion in committee to reduce the salary of the First Lord of the Admiralty ; and if the proposals in Chapter IX are accepted he will have a further opportunity without taking the time of the whole House.

(c) *Private Members' Motions*

From the beginning of the session until Easter, Wednesdays are occupied by private members' motions. The subjects are chosen by ballot ; they may or may not be interesting and/or valuable ; the subjects in which private members are interested may or may not be discussed ; the various shades of opinion in the House may or may not be put forward. In short, private members' motions are a gamble, with the odds heavily against the

backer. Nine times out of ten they are a waste of time. If the proposals in Chapter IX are accepted, they will be unnecessary, since private members will have other opportunities. The present arrangements should be abolished.

(d) *Motions for the Adjournment of the House*

Though points can be raised on an ordinary adjournment of the House, the opportunity is not very frequently used ; and, as the House already sits too late, it is not desirable that it should be used. But since the power is particularly useful in allowing individual cases of injustice to be brought to the notice of the House, it should be retained. The power to raise questions on the adjournment for a recess is used to bring up rather more general questions. So long as it is not abused it should be maintained.

(e) *Standing Order 10*

At the end of questions, any member can move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance. The power is used particularly where information is obtained at question time which suggests that a discussion of a Minister's actions is immediately

desirable. It is extremely useful where the Government has taken, or is taking, certain steps over which the House will have no control, and which will leave it its ordinary power of censuring the Minister. It is also useful where individual cases of injustice are made apparent.

If the motion is accepted by the Speaker and sufficiently supported, it comes on during the same evening. But the Standing Order has been so restrictively interpreted that the Speaker now very rarely accepts the motion. It is clear that some less restrictive words should be used. On the other hand, it is a power which is capable of abuse, and the orderly course of business should not be constantly interrupted by discussions of minor importance. It is suggested that "a definite matter of substantial public importance and immediacy" would be a better form of words.

(f) *Discussions in Government Time*

(g) *Votes of Censure*

These two methods have the common characteristic that the discussion takes place only if the Government thinks fit, and on a day agreed upon through the usual channels. There is, however, a tradition that the Government will find the time for a vote of censure. There is

a tendency for votes of censure to become more frequent and to be very little differentiated from ordinary debates. This tendency will be reversed if ample opportunities for discussion are made available by other means. The present practice should be continued so long as it is not abused.

## CHAPTER IX

### DEPARTMENTAL COMMITTEES

THE PRESENT SYSTEM of Parliamentary procedure was developed in an age when foreign policy and constitutional questions like the government of Ireland were the only really important questions of administrative policy apart from finance. But since the "unauthorised programme" the State has interfered more and more in the control of industry and the protection of the welfare of the individual. All parties pass legislation increasing the scope of Governmental activity. If the electorate accepts the general policy of the Labour Party, or even of those who believe that a capitalist system can be planned, Parliament will need to investigate and control even more services than it does at present. Consequently, while in the nineteenth century it was possible for all matters of policy to be debated on the floor of the House and by members who had no further experience than could be obtained by a diligent study of the newspapers, at the present

time—and still more in the future—a new technique is and will be necessary.

This is shown not only by the inadequacy of Parliamentary time for all the matters which members desire to discuss, but also by the formation of numerous private members' committees. Some of these are composed of members of a single party ; some discuss "non-political" issues, and so contain members of all parties. Thus on the one hand the ordinary debates are monopolised by present and former Cabinet Ministers, and on the other hand the most effective study which private members devote to public questions is in the unofficial committees. A further extension of Governmental functions can only strengthen this tendency. If private members are to do anything except walk through the lobbies, there must be a development of the committee system and of the process of specialisation.

Also, the House has lost most of its control over administration and policy. Indeed, many matters of public policy are for effective purposes settled by Civil Servants. While the need for rapid and effective government must be admitted, it must also be admitted that even the Treasury is not always right. In the last resort policy must be controlled

by those who represent public opinion. The Civil Service, too, has a departmental mind, and is rarely able to co-ordinate national policy or to see government as a whole. This tendency to departmentalisation is accentuated by the fondness of some politicians for the independent and, under the present system, uncontrolled statutory authority. Government is a single problem, and its general issues must be controlled by the Cabinet and by the House of Commons. The Cabinet is already over-worked, and is concerned almost entirely with current problems. The examination of general tendencies and of the consequences of past legislation must therefore be the functions of the House of Commons.

The only solution of this problem is the extension of the committee system. Two possible developments suggest themselves. The committees must be either party committees or all-party committees. Some prefer the former, stressing the desirability of a single philosophy. There are, however, several objections to such a system. In the first place, majorities change from Parliament to Parliament, and the advantages of continuity in membership and ideas will thus be lost. In the second place, it is desirable that the Opposition should have access

to any information which the Committee may obtain and use it to influence policy. In the third place, a party committee—especially a conservative party committee—would be very much under the thumb of the whips, and so would tend to be ineffective. In the fourth place, not all matters of Government are dominated by party philosophy—such varied matters as the drink trade, betting, religious education, electricity supply, and the ordinary administration of justice, are obvious examples. In the fifth place, it cannot be assumed that members of the Opposition cannot contribute to the discussion of matters of importance. A railway director is not necessarily entirely ignorant of transport matters ; a trade-union leader knows a great deal about factory conditions ; a landowner may know something about agriculture ; a miners' representative has some acquaintance with coal. While the committee must be dominated by the ideas of the party in power, it would frequently discuss semi-technical issues on which knowledge and experience can be pooled.

To be really effective, therefore, the committee must be an all-party committee, reflecting, as far as possible, the party composition in

the House. If it is to develop a certain expertise, its functions must relate to the services provided by a Department or by a group of cognate Departments. It would obtain information, discuss the need for legislation, and debate policy generally. It would report to the House anything which it regarded as important. It would publish anything necessary to create or inform public opinion. It would be, in short, a permanent Departmental Committee or Royal Commission. It might discuss, too, matters specially submitted to it by the House or by the Department, and would act as a general advisory committee to the Department. It would need to take evidence from outside, both from outside experts and from the Department. For the same reasons as those put forward in Chapter IV in relation to legislative committees, it should have the right to examine—*in camera* if necessary—Civil Servants from the Department and from other cognate Departments. It should normally expect the presence of the Parliamentary Secretary or other junior Minister of the Department, the Departmental head attending when he thought desirable.

Such a proposal is necessarily closely connected with the proposal in Chapter IV for

the establishment of standing committees for legislative purposes. Some of those who support both proposals urge that the two sets of committees should be distinct. It must be admitted that the process of legislation is distinct from the process suggested in this chapter of the present book. They are, however, so closely allied that a separation would involve unnecessary duplication and a waste of valuable opportunities. It is contemplated that the administrative committee would investigate the need for legislation and would make suggestions for legislation when it was thought desirable. That committee is by far the most competent to put its proposals into legislative form. It would also consider the consequences of its own legislation, and it alone would be aware of the objects of the legislation and how far the purposes at which it aimed have been achieved. It would suggest amending legislation and carry out its own suggestions. In considering a Bill it would realise the existence of unexpected problems, and would then investigate these problems to see how far further legislation was necessary. Its records would contain suggestions for minor amendments which could be inserted in general legislation when the opportunity arose. It would, in considering

legislation, suggest to the Department the line of action which might be followed in administration. In considering administration it might suggest the use of powers which it had inserted in legislation for the issue of Statutory Rules and Orders.

The most important of these committees would be the Finance Committee attached to the Treasury. As was suggested in Chapter VII, this committee would examine the estimates and the accounts and would take the place also of the Committee of Ways and Means. Here administration and legislation are inseparable. The Appropriation Act, the Finance Act, and the Consolidated Fund Act are certainly legislation. But the discussion upon them necessarily relates to administrative policy. The committee would not only assist the general financial debates of the House, but also it would relieve the House of the detailed consideration of financial legislation and replace the Select Committees on Estimates and on Accounts.

The discussion which was produced by the memorandum which forms the substance of this book suggested that opinion was most sharply divided on the proposals in this chapter. Among others, Dr. Lees-Smith at once raised

objections ; and when a summary was published in the *Manchester Guardian* he indicated in a letter published in that journal on 25th May, 1934, the reasons for his objection.

" In my view," he said, " this would kill the prospect of a Labour or any other Government with any driving power. These standing committees consist of all parties of the House. A Minister who has to placate continuously a committee on which his opponents are in full force will be driven to adjustments and compromises which will paralyse the Government. In both the Labour Governments—which were minority Governments—he would have been dealing with a committee where the other parties had a majority. The present perilous financial position in France is largely due to the fact that the French Finance Minister has year by year been hamstrung by the Budget Committee. The doctrine that it is the business of members of Parliament to administer is a mistaken one. That is the duty of the Ministers, and the full responsibility should be thrown on them. Members of Parliament are elected to legislate. In addition, they control the general direction of administration by questions in the House, estimate debates, personal influence,

and party committees—which are now becoming a most powerful element in our Government. But to enable them to interfere with the Minister having personally to bear the brunt of public criticism is to give them power without responsibility, the most dangerous of all mistakes.”

It should be said in the first place that there is no proposal that the House of Commons or any committee thereof should administer. It is not even true that the House legislates. What it does, in respect of Government Bills, is to discuss and assent to the Government’s proposals. It suggests amendments, it argues political issues, and it criticises proposals in detail. A defeat of the Government, even in committee, is a rare phenomenon under the two-party system. A minority Government has a more difficult task, since it has to placate a third party ; but even then it is the party leaders, and not the House, who legislate. Every legislative proposal, however, needs Parliamentary approval. It is not suggested that every administrative action should receive express Parliamentary sanction. What is suggested is that the House should provide means

by which the more technical issues, which cannot effectively be raised on the estimates without wasting the time of the House, should be discussed in committee if and when members want to discuss them.

It should be remembered that it is largely a historical accident whether a Government proposal does or does not need legislation. In respect of some matters of major importance, such as education, the Poor Law, the Post Office, and general Civil Service conditions, the Departments have wide statutory or prerogative powers. The Foreign Office can lead us into war without express Parliamentary sanction ; the Board of Education can re-organise the whole educational policy (with comparatively unimportant exceptions) without legislation ; the Ministry of Health can change the principles of poor relief, and the Post Office can alter its organisation, without seeking Parliamentary approval ; under the prerogative powers of the Crown the Civil Service can be made subject to patronage once more. The whole tendency of recent developments—a tendency recognised to be necessary by the Donoughmore Committee—is to leave large powers in the hands of the Departments. Proposals in this book suggest further

development along this line. Dr. Lees-Smith would apparently be willing, as Minister, to discuss every iota of his programme if it involved legislation. He would be willing to discuss only the political principles if he had statutory or prerogative powers already. The further development of administrative powers can constitutionally be justified only if Parliament is given power to examine the way in which those powers are used.

A debate on the floor of the House is a political discussion. It goes to the root of party issues. Administrative defects and administrative injustices do not raise party debates. They ought not to give rise to the resignation of the Government or the dissolution of Parliament unless they are flagrant. Only in rare cases will the majority fail to support the Government on the floor of the House, for a defeat of the Government is in such circumstances a vote of no-confidence which demands either resignation or dissolution. Neither is wanted, except by the Opposition. But this dependence of the majority upon the Government ought not to deprive Parliament of its power of effective criticism, as it has done in the past and as it will do still more in the future. Even in a standing committee, it may be expected that

defeats of the Government will be as rare on administrative questions as they are on legislative questions. Nevertheless, the right to receive explanations and the right to criticise are most valuable. Democratic Governments must keep their ears to the ground. Members of Parliament are even closer to the sources of opinion. Even when they vote with the Government they may, by their action—or inaction—and by their speeches—or even their failure to speak—help to keep a Government efficient, honest, and active.

The Incitement to Disaffection Bill, which is, at the moment of writing, before a standing committee, provides an admirable example. The Government has an enormous majority on the committee. It has not yet been defeated. Nevertheless, the Bill is gradually being shorn of many of what some people think to be its worst features. This consequence is due in part to an outside agitation which is supported by influential persons of all parties. But the Attorney-General is being compelled to give way largely because of the absence of effective support from his own party. Twice already he has failed to get a quorum. Rarely has he been supported by speeches of which he could wholly approve.

This Bill does raise serious political issues. But not every Government proposal involves questions which need to be discussed between the parties. Examples have already been given. Is there any reason why the questions of maternal mortality, of water supply, of the slowness of town and country planning, should not be raised quietly, without having to put down the Ministry of Health vote and taking the time of the House?

Nor is it contemplated that the committees should limit themselves to the consideration of the Government's action. They should consider inaction as well. In this connection it is desirable to recall that when Parliament has approved legislation it has no means of watching the consequences. It has to wait until the Department concerned admits the inadequacy or the injustice of its original proposals and submits amending Bills. Three recent examples will suffice (cf. *Manchester Guardian*, 2nd June, 1934).

Even those who agreed with the principle of the means test admitted that the hasty legislation of 1931 had created certain grievances. This was, I imagine, common talk in the smoke-room. It was certainly discussed in unofficial committees of members supporting

the Government. But the only way to get the grievances discussed was to wait for the Opposition to raise the principle of the means test—a principle with which the vast Government majority was in agreement. In the debate it was possible for Government supporters to mention these grievances, in the hope that the Ministers would consider them afterwards. But this method had two defects. It took the time of the House in raising minor questions in which the House as a whole was not particularly interested ; and the major issues of party politics swamped the comparatively minor but nevertheless important questions. If there had been a Departmental Committee in existence, these questions could have been more effectively and more appropriately discussed. And, what is more, the facts of the situation could have been investigated.

Again, the Town and Country Planning Act was passed in 1932. It is known that there are anomalies and injustices. Complaints are being made that the procedure is slow and expensive. It is failing to achieve its object, because the slowness of its procedure is enabling speculative builders to evade it. Ribbon development and ugly defacing building are proceeding because

of these defects.<sup>1</sup> Yet there has not been a discussion on the subject in the House since the Act was passed. Probably there will be no discussion until the Ministry of Health finds the time and the courage to introduce amending legislation. It would be the function of the Departmental Committee to examine the position and to call the attention of the House to the need for amendments.

Again, what are the consequences of the marketing schemes? Are they hindering essential production? Are they lining producers' pockets at the expense of the consumers? Surely Parliament cannot deny its responsibility for the results of its legislation merely by saying that the Minister of Agriculture and Fisheries is responsible for administration. The constituencies know no such refinements. They know, or suspect, that the price of bacon has gone up, and all supporters of the National Government are being, and will be, asked why.

Indeed, this alleged constitutional division of responsibility has a long and dismal past.

<sup>1</sup> The Essex and Surrey County Councils have already obtained additional powers by the dilatory and expensive process of private Bill legislation. Middlesex and Hertford are following suit. Must general legislation wait until all the Home Counties have paid through the nose for special powers?

Queen Victoria objected to the enquiry into the conduct of the Crimean War because foreign policy and military administration were matters of royal prerogative, and the Government was responsible to her. Those who object to effective Parliamentary criticism seem to demand the sort of constitution which Baron Stockmar read into the relations of George III, William Pitt, and the unreformed Parliament. The modern House of Commons is for most purposes a body of persons supporting or opposing the Government. The majority accepts responsibility for the acts of the Government. They will be returned or rejected at the next election according as the policy of the Government is approved or disapproved by their constituents. Since normally they must support the Government, they must have the means for keeping the Government in touch with public opinion.

The difficulties of the Labour Governments of which Dr. Lees-Smith was a member do not prove the contrary. Government without a majority is necessarily difficult. The main strength of a Government lies in its majority. Though a minority Government is not without its power of forcing its decisions upon a reluctant House, it does not possess the most effective

means to that end. Yet if a Government has no majority, it becomes all the more necessary to keep closely in touch with Parliament. A majority Government can take unpopular decisions because its majority prefers to vote for measures which it cannot approve rather than to bring in the Opposition or to risk a dissolution. A Government with an enormous majority, like the present National Government, can risk a substantial amount of abstention and even cross-voting. But a minority Government must count every vote and feel every breath of air that changes the opinions of its own supporters and of the third party that, for the time being, maintains it in power.

Now, a system of Departmental Committees does not add to the number of votes that it must secure. It adds to the number of explanations that it must give and to the number of criticisms that it must receive. In receiving criticisms put, not in formal debates, but in detailed committee work, a Department can learn effectively what is the strength of the Opposition that it has to meet. It can learn why the Government's own supporters are lukewarm, and upon what terms the third party is willing to compromise. Minority government demands tact, and tact demands

knowledge. Such knowledge cannot be obtained if Ministers shut themselves away in Whitehall whenever they are not trying to force unpopular legislation down reluctant throats. The difficulties of the Labour Governments can hardly be over-estimated. They were far greater than those which faced Mr. Gladstone's third Government and those with which Mr. Asquith had to deal after 1911. Nevertheless, it must be recorded that it is the opinion of Labour and Liberal members that with more appreciation of the ideas which those members had, the Labour Governments could have done more or, alternatively, could have realised sooner that their task was impossible. If there had been Departmental Committees, the Labour Governments could have kept more closely in touch with Parliamentary opinion, and so could have avoided some of the defections among the electorate that followed the City of London panic in August 1931.

Thus, even in 1930 Departmental Committees would have been of some advantage. But it is clear that the Parliamentary system works really effectively only under the two-party system. The common sense of the electorate and the natural ambitions of politicians tend to produce that system. Party dissensions

are frequent, regarded historically. But after a discreet interval the right wing of the progressive party is absorbed by the Conservative Party. Indeed, it is only in this way that the Conservative Party can constantly become rejuvenated. The "natural" system is therefore the two-party system ; and it is upon the assumption of that system that reforms must be based.

It is this fact which differentiates the English Parliament from its progeny elsewhere. It is this fact, therefore, which nullifies any argument which Dr. Lees-Smith can produce from French experience. A two-party system working under a straight-voting system differs essentially from a multi-party system working under any form of proportional representation. The French committees have enormous power because every French Government is a coalition ; and French coalitions are real coalitions, not mere coalitions of labels, like Aberdeen's Government, and Lord Salisbury's Government, Mr. Lloyd George's Government after 1918, and the present National Government. They are mere temporary combinations of distinct parties.

But Dr. Lees-Smith's argument is not merely based on false premises ; it is a false argument.

For the power of the French committees arises not through their ability to discuss administrative policy, but through their power over legislation—a power which Parliament in this country claims and exercises. If such power leads to weak Government, it must lead to it in Great Britain now—a conclusion which is falsified by experience. The power of the French Finance Committee resides in its control over the Budget—that is, over legislation. The British Parliament has not that control, partly because private members have no power to propose expenditure, and partly because British Governments quite rightly insist that the Budget is a unit, and that they stand or fall upon its unity. The Government majority is thus faced with its usual dilemma. Either it must support the Government, or it must vote its own dissolution.

For these reasons the objections which Dr. Lees-Smith put forward seem to be invalid. The Departmental Committees would be, as Professor Vaucher has said in relation to the French Commissions,<sup>1</sup> "useful in collecting information, drafting well-prepared reports, and, last but not least, in supporting the members during the debates and thus strengthening

<sup>1</sup> *Political Quarterly*, vol. v., p. 369.

their leadership." They would, in addition, provide effective criticism of administrative action without depriving Ministers of their power of decision, restrain any tendency to "bureaucracy," and see that legislation is fulfilling the purposes that it was intended to serve. They would, in other words, make for stronger and more democratic government. They would bring the Government more closely into touch with public opinion without weakening its power to govern.

## CHAPTER X

### THE LIBRARY

IT MAY SEEM out of place to mention in a short book on Parliamentary procedure what appears to be the purely domestic problem of the Library. It is, however, an important question. Parliament is now constantly discussing complicated matters of technical interest. Members do not carry much technical knowledge in their heads. No head can carry all the technical knowledge on any subject. Yet the House of Commons has never made any attempt to make the library suitable for the purposes which it is intended to serve. It contains such books as the Library Committee knows about, or which happen to have been recommended by members and approved by the Library Committee. It is grossly defective in most branches of learning with which Parliament is concerned. It is no uncommon event for such specialist libraries as the British Library of Political and Economic Science to receive requests for information from members

of Parliament. Steps should therefore be taken for making the library adequate to its task. This means not only the provision of a really first-class library, especially on commercial, economic, and constitutional questions ; it means also the appointment of a sufficient staff to catalogue and index the material which it ought to contain. Especially necessary is an adequate index of the Parliamentary debates and of official papers of all kinds, foreign and dominion and colonial, as well as British. Also, the average member has no time for research, and comparatively few can afford a competent private secretary. It should be one of the functions of Parliament to inform its own members. The library staff should therefore be able to produce information on any topic with which the House, or a committee thereof, is dealing. If, for instance, the problem under discussion is local taxation, the library should be able to produce a memorandum referring to official statistics, the reports of the numerous commissions and committees which have investigated the problem in the past, reports on foreign experience, and the investigations of private research workers.

This would have the advantage of limiting requests for information at question time.

Figures and facts which are readily available from the library need not be the basis of answers in Parliament, with all the time-wasting and expense involved. If such questions are put upon the paper the member should be referred to the library.

## CHAPTER XI

## THE PARLIAMENTARY TIME-TABLE

TAKING THE FIVE SESSIONS from 1926 to 1930, and omitting the time devoted to the General Strike in 1926, to the Prayer Book Measure in 1927 and 1928, and to questions, we find that an average of 108 full days and 29 Fridays or equivalent short days were used for the following purposes (the figures are averages) :

PURPOSE	Full days	Fridays or equivalent
1 Preliminaries (Election of Speaker, Oaths, etc.)	1	
2 Private Members (Bills and Motions)	7½	12
3 Opposition (Votes of Censure, etc.)	2	
4 Address	5	1
5 Adjournment for Recess		2½
6 Financial Business	44½	2½
7 Routine Business	1½	½
8 Motions initiated by Government	½	½
9 Government Legislation	44½	9
10 Adjournment (Deaths)	½	
11 Adjournment (S.O. 10)	1/20	

Though the varying conditions of the country and of the Parliamentary atmosphere make averages dangerous and these figures deceptive, some instruction may be derived from them :

(a) The "Preliminaries" occupy about three days in every Parliament. They have no utility, though they possess a certain antiquarian interest. There seems to be no reason why the oath cannot be taken (if it is taken at all) before a justice of the peace, or in private before the Speaker. Since the Speaker is in fact appointed as a result of discussion between the leaders, at least one day in a Parliament is spent on complimentary speeches.

(b) Private members occupy about one-ninth of the Parliamentary time. It has been suggested in the previous chapters of this book that private members' motions are useless, and that some of the time devoted to Bills is wasted. In the Parliaments of 1924-9, 430 private members' Bills were introduced and 60 were passed. Of the balloted Bills, 119 were introduced and 29 passed. Under the proposals in Chapter IV they would receive greater opportunities and probably take less of the time of the House.

(c) General debates (apart from debates on the estimates and on Ways and Means resolutions) occupied about one-twelfth. It is suggested that this is inadequate. But the proposals in Chapter VIII provide for much greater opportunities without adding much to the time taken by the House as a whole.

(d) Financial business occupied rather more than one-third. The proposals in Chapter VII of this book would reduce this proportion by cutting out the almost useless debates on supplementary estimates and by eliminating some of the discussion on the Finance Bill.

(e) Government legislation occupied rather more than one-third. The proposals in Chapter IV of this book would reduce this very substantially, given the same number of Government Bills. But, of course, more Government legislation may be expected as a consequence : and, indeed, this is the chief purpose of the proposals. The proposals involve a very considerable increase in committee work "upstairs." Much of this would have to be done in the mornings, as now. But Wednesdays would be left free, unless taken for the general debates on legislation. Normally they should be left free for committee work ; and this would

have the additional advantage of leaving Ministers free for departmental work. It has been suggested that the junior Ministers should be more closely associated with Parliamentary committees than the heads of Departments. In addition, much greater use should be made of junior Ministers on Cabinet committees. Another point to be remembered is that the committees suggested are small bodies, so that several or most of them could be sitting at the same time.

It is considered, therefore, that the proposals embodied in this book would result in the performance of the present functions of the House of Commons in a substantially smaller time. More opportunity would thus be made available either for the discussion of legislation, or for debates on general issues of policy. At the same time, the private member would feel that he was doing something of value. As a member of one or more Departmental Committees, whether they were or were not exercising legislative functions as well, he would add the knowledge and experience which he possessed to the wider knowledge and greater experience available in the Government Departments. He would possess no greater control over the Government than he

now possesses. But he would possess the right which Bagehot accredited to the sovereign—the right to be consulted, the right to encourage, and the right to warn.

## POSTSCRIPT

ON THE DAY that this book went to press, Mr. Stanley Baldwin announced the decision which the Government had taken on the proposals made by the Select Committee on Procedure on Public Business. This committee took evidence during the session of 1930-1, and issued a report during the session 1931-2. It reached the unanimous conclusion that "the procedure of Parliament is sufficiently flexible to meet all the demands made upon it." It proposed, however, a few minor amendments, and some of these have now been accepted by the Government. In this book some use has been made of the evidence tendered to the committee and subsequently published. Unfortunately, the committee thought that only those with long Parliamentary experience knew anything about Parliamentary procedure, whereas the most interesting evidence was given by the officials and by those with the shortest experience. It is not surprising, therefore, that the committee

came to a conclusion which those who watch Parliament from a distance sufficient enough to see what it really does can only describe as ludicrous.

The Government in office at the present time has an enormous and loyal majority. It has never been in real danger of defeat in the House. Its majority contains many who never take any part in the proceedings of the House, and many more who do nothing more than vote. The existing procedure therefore operates in the most favourable conditions. A great deal of legislation has been passed. But much has not been introduced simply because there was no time for it. Several Bills of major importance have been promised for next session, owing to lack of time in the present session. The most important Bill of the session, the Unemployment Bill, was passed only by a stringent use of the guillotine, and even then there were whole sections which could not be discussed owing to the fall of the guillotine. Many amendments, some of them entirely non-political (in the sense that they were not sponsored by the political leaders, but were proposed by private members at the instance of outside interests), were never even mentioned. Nevertheless, the Bill did not contain

the whole of the Government's proposals, since very wide powers of delegated legislation have been taken. Moreover, though it is generally agreed that the procedure works more effectively when the session begins in the autumn and ends in July, the session has been prolonged into the autumn. The chief reason for this is the desire to enable the Joint Select Committee on Indian Constitutional Reforms to complete its work. But it is quite clear that if the session had been brought to an end in July, at least four major Bills would have been dropped, namely, the Betting and Lotteries Bill, the Incitement to Disaffection Bill, the Electricity (Supply) Bill, and the Sea Fisheries (Regulation) Bill. There was the usual vast slaughter of private members' Bills. Some of them were not read a second time because the Bills which preceded them were "talked out," some were "talked out," some did not complete the committee stage, and some failed because there was no private members' time left for third reading.

On the day on which Mr. Baldwin made his announcement, the House began as usual at 3.15 p.m., but did not rise until 3.50 a.m. The House began by considering on report the votes which it had already, theoretically at

least, agreed to in committee. The result was a number of discussions on miscellaneous points, some of which needed complete debates, while others ought to have been discussed in committee. Members were able to make the speeches which they had prepared for previous debates, whether they had made them before, or whether they had been unable to catch the chairman's eye in the previous debates. But this being the last day available, all the votes had to be taken, whether they needed discussion or not. Some of them were challenged, although there was no time for debate. Accordingly, the House spent about an hour and a half in doing nothing except walk through the lobbies. After this interval for exercise (Mr. Baldwin defended this practice in his evidence before the Select Committee by the assertion that it allowed time for tempers to cool !), the House proceeded to consider, in committee, the Lords' amendments to three important Bills—the Road Traffic Bill, the Milk Bill, and the Poor Law (Scotland) Bill. On the motion to consider the Lords' amendments on the first of these, Conservative members objected on the ground that such numerous and important amendments ought not to be discussed at such a late hour in the presence of so few

members. The Government replied that unless the resolution was carried the House would have to continue sitting in August. Some members were prepared for this, but the Government objected, and, when a division was challenged, the Government motion was carried by 193 votes to 68—that is, 261 members out of a total of 613 were present and voted. One of the amendments applied the speed limit to the hours between midnight and 5 a.m. The Minister of Transport asked the House to agree, not because he or the House agreed with it, but because the Bill was urgent and there was no time to have an argument with the Lords on the subject. On the other Bills further objections were taken to considering such important proposals in the small hours of the morning. These protests were without avail, and without any adequate discussion the House accepted the Lords' amendments. Finally, the House read a second time the County Courts Bill, a great consolidating measure.

On the following day, the House proceeded to read a second time the Appropriation Bill. This Bill consists almost entirely of figures. everything in it had already been discussed in Committee of Supply, in Committee of Ways

and Means, and in the House (on report). Nevertheless, there was a discussion which occupied the whole day and in which any member could, under the rules, say over again everything which he had said already, perhaps three times, in the previous debates. This sitting of the House lasted from 11 a.m. (thus giving the House an interval of little more than seven hours) until 3.50 p.m.

This single example will perhaps explain why outside observers do not take seriously the decision of the Select Committee, unctuously repeated by the Leader of the House, that "the procedure of Parliament is sufficiently flexible to meet all demands made upon it." It shows that on the one hand the House has no time to give adequate attention to many matters of great importance, and that, on the other hand, it wastes time in futility. But for the entirely abnormal election of 1931, the position would have been much more difficult. It must be expected that normally the numbers of the parties will be much more nearly equal. Moreover, it cannot be expected that there will again be a considerable number of members who did not expect to be returned, and who are unable to take an effective part in the work of the House. The attendances have been small,

and comparatively few members have desired to speak. When the party system again works normally, the House will be even less capable of meeting the demands made upon it.

